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atus: GRANTED
PITAL CASE

Title: Ricky Wayne Tison and Raymond Curtis Tison,
Petitioners
v.
Arizona

Court: Supreme Court of Arizona

cketed:
nuary 16, 1985

Counsel for petitioner: Oleskey, Stephen H., Dershowitz, Alan
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Counsel for respondent: Cole, David R., Schafer III, William
J.

EDITOR'S NOTE

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try	Date	Note	Proceedings and Orders
1	Jan 16 1985	G	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
3	Feb 21 1985		Brief of respondent Arizona in opposition filed.
4	Feb 28 1985		DISTRIBUTED. March 15, 1985
5	Mar 6 1985	X	Reply brief of petitioners Ricky W. Tison, et al. filed.
6	Mar 12 1985		* Amended reply brief received and distributed.
8	Mar 18 1985		REDISTRIBUTED. March 22, 1985
0	Mar 25 1985		REDISTRIBUTED. March 29, 1985
2	Apr 5 1985		REDISTRIBUTED. April 12, 1985
4	Apr 15 1985		REDISTRIBUTED. April 19, 1985
6	Feb 7 1986		REDISTRIBUTED. February 21, 1986.
8	Feb 24 1986		petition GRANTED. *****
9	Mar 7 1986	G	motion of petitioner Ricky W. Tison for appointment of counsel filed.
0	Mar 7 1986	G	motion of petitioner Raymond Tison for appointment of counsel filed.
1	Mar 12 1986		DISTRIBUTED. March 21, 1986. (Motions for appointment of counsel).
2	Mar 24 1986		motion for appointment of counsel GRANTED and it is ordered that Alan M. Dershowitz, Esquire, of Cambridge, Massachusetts, is appointed to serve as counsel for the petitioner in this case.
3	Mar 24 1986		motion for appointment of counsel GRANTED and it is ordered that Alan M. Dershowitz, Esquire, of Cambridge, Massachusetts, is appointed to serve as counsel for the petitioner in this case.
5	Mar 27 1986		order extending time to file brief of petitioner on the merits until May 2, 1986.
6	Apr 7 1986		Joint appendix filed.
7	Apr 15 1986		record filed.
8	Apr 23 1986		Brief of petitioner filed.
9	May 30 1986		Brief of respondent Arizona filed.
0	Jul 25 1986		CIRCULATED.
1	Sep 3 1986		SET FOR ARGUMENT. Monday, November 3, 1986. (2nd case) (1 hour)
2	Sep 22 1986	X	Reply brief of petitioners Ricky W. Tison, et al. filed.
3	Nov 3 1986		ARGUED.
4	Nov 4 1986	G	motion of petitioners for leave to file a supplemental brief after argument filed.

84-6075-CSY

Entry	Date	Note	Proceedings and Orders
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| 15 | Nov 4 1986 | X Supplemental brief of petitioners Ricky W. Tison, et al. filed. | |
| 17 | Nov 17 1986 | Motion of petitioners for leave to file a supplemental brief after argument GRANTED. | |

**PETITION
FOR WRIT OF
CERTIORARI**

84 6075

JAN 16 1985
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IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1984

RICKY WAYNE TISON and
RAYMOND CURTIS TISON,

Petitioners

v.

STATE OF ARIZONA,

Respondent

JOINT PETITION FOR WRITS OF CERTIORARI
TO THE SUPREME COURT OF ARIZONA

THIS IS A CAPITAL CASE

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QUESTION PRESENTED

1. Is the December 4, 1984 decision of the Arizona Supreme Court to execute petitioners in clear conflict with the holding of Enmund v. Florida, 458 U.S. 782 (1982), where - in words of the Arizona Supreme Court - petitioners "did not specifically intend that the [victims] die. . . did not plot in advance that these homicides would take place, or . . . did not actually pull the triggers on the guns which inflicted the fatal wounds . . .?"

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OPINIONS BELOW

The opinions and judgments of the Supreme Court of Arizona sought to be reviewed are not yet officially reported, but they are reproduced in the Appendix attached to this petition. The opinion in the case of petitioner Ricky Wayne Tison is reproduced as Appendix Exhibit A(1a). The Order denying relief in the case of petitioner Ricky Wayne Tison is reproduced as Appendix Exhibit E (72a). The opinion in the case of petitioner Raymond Curtis Tison is reproduced as Appendix Exhibit B (20a). The Order denying relief in the case of petitioner Raymond Curtis Tison is reproduced as Appendix Exhibit G (74a).

JURISDICTION OF THE SUPREME COURT

Petitioner Ricky Tison was convicted of murder, kidnapping, robbery, and theft of a motor vehicle in the Superior Court of Yuma County, Arizona, on February 27, 1979. Petitioner Raymond Tison was convicted of the same crimes in the Superior Court of Yuma County, Arizona, on March 6, 1979. Both Petitioners were sentenced to death for the murders and to prison terms for the remaining crimes on March 29, 1979. (91a-93a).

On July 9, 1981, the Supreme Court of Arizona affirmed Ricky Tison's convictions and sentences. State v. (Ricky) Tison, 129 Ariz. 526, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882 (1982), reh. denied 459 U.S. 1024 (1982). (39-59a) On the same day, the Court affirmed Raymond Tison's convictions and sentences. State v. (Raymond) Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, reh. denied 459 U.S. 1024 (1982). (60a-71a)

On June 19, 1983, Ricky and Raymond Tison filed Petitions for Post-Conviction Relief in the Superior Court of Yuma County, Arizona. (106a-115a). After the Superior Court summarily denied the Petitions, the Supreme Court of Arizona granted their Petition for Review of Petition for Post-Conviction Relief on December 7, 1983, accepted written memoranda and received oral arguments. The Arizona Supreme Court denied relief on October 18, 1984 in a 3-2 decision, Vice Chief Justice Gordon and Justice Feldman dissenting. (1a-39a, 72a, 74a) Petitioners' Motion for Reconsideration was denied on December 4, 1984, with the same two Justices dissenting. (43a) The denial of their petitions for post-conviction relief and the denial of petitioners' motions for reconsideration are the judgments petitioners now seek to have reviewed by this Court.

Petitioners asserted below and assert here a deprivation of their rights as guaranteed by the United States Constitution. This Court's jurisdiction is invoked under Title 28, United States Code, Section 1257(3).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution:

Amendment VIII:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment XIV, Section 1 to the Constitution of the United states, in part:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

State Statute

Laws of 1973, Ch. 138, §5, Ariz. Rev. Stat. Ann. §13-454 (Supp. 1957-1978) (Repealed 1978) is reproduced in the Appendix as Exhibit K at pp. 103a-105a. This statute was in effect at the time of the crimes for which petitioners stand convicted. It was then repealed and replaced when Arizona revised its criminal code, effective October 1, 1978.

STATEMENT OF THE CASE

A. Introductory Statement

This petition raises the same issue decided in Enmund v. Florida, 458 U.S. 782 (1982): whether it is constitutional to execute petitioners who were convicted of aiding and abetting a felony murder, but who -- in the words of the Arizona Supreme Court -- ". . . did not specifically intend that the Lyonses and Theresa Tyson die, . . . did not plot in advance that these homicides would take place, or . . . did not actually pull the triggers on the guns which inflicted the fatal wounds . . ."

B. Statement of Facts

On July 30, 1978, petitioners Ricky Wayne Tison, then age 19, and Raymond Curtis Tison, then age 18 -- both without prior felony records -- went with their older brother Donald to visit their father, Gary Tison, at the Arizona State Prison. (62a) Gary Tison was serving a life sentence for murder, as was a friend of his, Randy Greenawalt. (43a) Petitioners and their brother entered the prison about 9:00 a.m. and produced weapons from an ice chest. (62a-63a) They passed a hand gun to Greenawalt, who was a trustee in the control room of that portion of the prison. (63a) The group then locked numerous guards and visitors into a closet, and walked out the front door about 9:30 a.m. (63a) They drove away from the prison parking lot, abandoned their car for a waiting white Lincoln, and drove away on back roads. (43a; Transcript of Trial of Ricky Wayne Tison, hereinafter cited as "Ricky's Tr.", 2-22-79, p. 462).

The evidence tended to show that the car in which the men were riding had a flat tire the night after the escape, and that the men flagged down the next car which drove by in the early morning hours of August 1. (2a, 44a) The car was a Mazda driven by John Lyons. His wife, their son, and their niece, Theresa

Tyson, were with him. (43a-44a) When the car stopped, guns were drawn by the Tisons and Greenawalt, and both cars were driven several miles down a dirt road off the main highway. (44a; Ricky's Tr. 2-22-79, p. 463). The vehicles were then parked trunk to trunk, and the Tisons' possessions were put in the Mazda. (44a, Ricky's Tr. 2-22-79, p. 463). The Lyons' possessions were then put in the Lincoln, and John Lyons' money and weapons were taken. (44a; Ricky's Tr. 2-22-79, p. 478, Ricky's Tr. 2-21-79, p. 218). The Lincoln was then driven a little further into the desert. (44a; Ricky's Tr. 2-22-79, p. 463). Gary Tison and Greenawalt shot some holes in the Lincoln, and the Lyons and Theresa Tyson were placed in it. (Ricky's Tr. 2-22-79, p. 463). Gary sent petitioners and their brother Donald back to the Mazda for some water (Id.) Then Randy Greenawalt and Gary Tison shot the victims. (44a; Ricky's Tr. 2-22-79, pp. 463-64). Gary Tison, Greenawalt, petitioners, and their brother Donald then drove away in the Mazda. (44a).

Around 3:00 in the morning of August 11, the men came to a roadblock near Casa Grande, Arizona. (44a) The vehicle slowed down and then accelerated through the roadblock. (44a) Shots were fired and two police cars chased the vehicle to a second roadblock. (44a). Officers fired at the vehicle as it ran the second roadblock and came to a stop in the desert. (44a) In the driver's seat the officers found Donald Tison, who had been shot in the head and later died of the wounds. (44a, 63a) The police found petitioners and Randy Greenawalt nearby in the desert. (44a) Gary Tison was found dead in the desert several days later. (44a, 63a)

Petitioners were tried jointly with Greenawalt in Pinal County, Arizona for crimes occurring at the prison and the roadblock. (63a) They were each convicted of seventeen counts of assault with a deadly weapon, and one count each of aiding and assisting an escape, possession of a stolen motor vehicle, and

unlawful flight from a pursuing law enforcement vehicle. (63a) In addition, Ricky Tison was convicted of taking prohibited articles into prison. (63a) Petitioners were given concurrent sentences of 30 years to life for each of the assaults. (63a) They were given sentences of four to five years for each of the other offenses, to be served concurrently with each other but consecutively to the assault sentences. (63a) The convictions and sentences were affirmed by the Arizona Supreme Court in State v. Greenawalt, et al., 128 Ariz. 388, 626 P.2d 118, cert. denied sub nom. Tison v. Arizona, 454 U.S. 848 (1981). (63a)

Petitioner Ricky Tison was tried for and convicted of murder, kidnapping, robbery, and theft of a motor vehicle in Yuma County, Arizona. Petitioner Raymond Tison was convicted of the same crimes in a trial immediately following Ricky's.¹ Petitioners then underwent a joint sentencing hearing before the trial judge. He sentenced them to death for the murders and to prison terms for the remaining crimes (91a-93a). Accompanying the sentence was a special verdict required by Arizona law containing the aggravating and mitigating circumstances found by the judge in imposing the sentences of death. (75a-90a, 103a). The aggravating circumstances found that pertained to the nature of the crime were precisely those previously found by the same judge when he sentenced Randy Greenawalt, one of the actual triggermen, to

¹ Randy Greenawalt was also convicted of murder, armed robbery, kidnapping, and theft of a motor vehicle. He was sentenced to death for the murders and given prison sentences for the other offenses. His convictions and sentences were affirmed by the Arizona Supreme Court in State v. Greenawalt, 128 Ariz. 150, 624 P.2d 828, cert. denied sub nom., Tison v. Arizona, 454 U.S. 848 (1981). He subsequently commenced habeas corpus proceedings in federal district court in Arizona. That court has just denied him relief. Greenawalt v. Ricketts, Civ. No. 83-2478 (D.Ariz., filed Dec. 14, 1984).

death.² (78a-82a) The Supreme Court of Arizona affirmed both petitioners' convictions and sentences. State v. Ricky Wayne Tison, 129 Ariz. 526, 633 P.2d 335 (1981), cert. denied 459 U.S. 982, reh. denied 459 U.S. 1024 (1982) (39a-59a); State v. Raymond Curtis Tison, 129 Ariz. 546, 633 P.2d 355, cert. denied 459 U.S. 982, reh. denied 459 U.S. 1024 (1982). (60a-71a)

Petitioners subsequently filed Petitions for Post-Conviction Relief in the Superior Court of Yuma County, Arizona, which under Arizona law were directed to the original trial and sentencing judge. (106a-115a) After he summarily denied the Petitions, the Arizona Supreme Court granted review. (163a, 164a) By a vote of 3-2, petitioners' death sentences were affirmed. State v. Ricky Wayne Tison, No. 4612-2-PC (Ariz. filed October 18, 1984), reh. denied Dec. 5, 1984 (1a-19a); State v. Raymond Curtis Tison, No. 4624-2-PC (Ariz. filed October 18, 1984), reh. denied Dec. 5, 1984 (20a-38a). These judgments are those petitioners now seek to have reviewed by this Court. Following the denial of rehearing, the State of Arizona issued warrants directing that Ricky and Raymond Tison be executed on January 30, 1985. (236a, 238a)

C. How The Federal Constitutional Issues Were Raised and Decided Below

The issue of whether the death penalty is disproportionate under the Eighth Amendment to the United States Constitution for someone convicted of murder on a theory of vicarious liability was raised in a presentencing memorandum to the trial judge by petitioner Ricky Tison's attorney. (94a-102a). Petitioner Raymond Tison's attorney joined in the memorandum. (77a). trial judge resolved the issue by sentencing petitioners to death

² Despite the fact that Ricky and Raymond Tison had no prior felony records, did not themselves commit the murders, were teenagers at the time of the offenses, and were found guilty only under felony murder instructions, the sentencing judge determined that there were insufficient mitigating circumstances to bar imposition of the death penalty. See Judgment and Sentence (93a), and the sentencing statute in effect at the time petitioners were charged, A.R.S. §13-554 (103a-105a).

while recognizing that they had been convicted under felony murder instructions. (83a, 88a). The issue was raised on appeal by both petitioners (Brief for Appellant, State v. Ricky Wayne Tison, 129 Ariz. 526, 633 P.2d 335 (1981) pp. 93-97; Brief for Appellant, State v. Raymond Curtis Tison, 129 Ariz. 546, 633 P.2d 355 (1981) pp. 88-92) and presented at length during the oral argument. The Arizona Supreme Court decided the issue adversely to both petitioners, despite its conclusion that Ricky and Raymond Tison "did not specifically intend that the [victims] die, . . . did not plot in advance that these homicides would take place, or . . . did not actually pull the triggers on the guns which inflicted the fatal wounds" State v. Ricky Tison, *supra*, 633 P.2d at 354 (57a); see State v. Raymond Tison, *supra*, 633 P.2d at 352-359 (resolution of issue is "identical" with resolution of issue in State v. Ricky Tison, *supra*).³

The issue was again raised in Ricky and Raymond Tisons' Petitions for Post-Conviction Relief, in light of the decision in Enmund v. Florida, 458 U.S. 782 (1982) which was decided after the first decision of the Arizona Supreme Court. See Petitions for Post-Conviction Relief (106a-115a); Memoranda in Support of Petitions for Post-Conviction Relief at 3-6 (118a-121a, 143a-145a). The Arizona Supreme Court, by its 3-2 decision of December 4, 1984, again decided the issue adversely to petitioners, (21a-24a), the dissenters arguing squarely that "the majority's holding is contrary to Enmund v. Florida, 458 U.S. 782, 102 S.Ct. 3368 (1982). . . ." (29a)

³ This Court denied the Tisons' joint petition for writs of certiorari from these decisions. Tison v. Arizona, 459 U.S. 882, *reh. denied*, 459 U.S. 1024 (1982).

REASONS FOR GRANTING THE WRIT

I. CERTIORARI SHOULD BE GRANTED BECAUSE ARIZONA INTENDS TO EXECUTE PETITIONERS IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSTITUTION EVEN THOUGH THEY HAVE NOT KILLED, ATTEMPTED TO KILL, OR INTENDED THAT DEATH OCCUR.

- A. The Arizona Supreme Court's holding that Ricky and Raymond Tison can be executed violates the principles established in Enmund v. Florida, 458 U.S. 782 (1982).
 1. Arizona's intention to execute petitioners even though they have not killed, attempted to kill, or intended that death occur, is in direct conflict with this Court's decision in Enmund v. Florida, 458 U.S. 782 (1982).

In 1979, petitioners were convicted of murder under felony murder instructions for killings committed by their father, Gary Tison, and his confederate, Randy Greenawalt. (43a, 52a) The Arizona Supreme Court affirmed petitioners' convictions in 1981, stating:

That they [petitioners] did not specifically intend that the [victims] die, that they did not plot in advance that these homicides would take place, or that they did not actually pull the triggers on the guns which inflicted the fatal wounds is of little significance.

State v. Ricky Tison, 129 Ariz. 526, 545, 633 P.2d 335, 354 (1981) (Ricky Tison I), *cert. denied* 459 U.S. 882 (1982) (57a); see State v. Raymond Tison, 129 Ariz. 546, 550, 633 P.2d 355, 364-65 (1981) (Raymond Tison I), *cert. denied* 459 U.S. 882 (1982) (69a-70a).

In 1982, this Court decided Enmund v. Florida, 458 U.S. 782 (1982), and vacated the death sentence of a man who participated in a robbery in which two people were shot to death. This Court noted that "Enmund himself did not kill or attempt to kill; and as construed by the Florida Supreme Court, the record before us does not warrant a finding that Enmund had any intention of participating in or facilitating a murder." *Id.* at 798. This Court stated that the focus must be on "the validity of capital punishment for Enmund's own conduct." *Id.*

Enmund did not kill or intend to kill and thus his culpability is plainly different from that of the robbers who killed; yet the State treated them alike and attributed to Enmund the culpability of those who killed the Kerseys. This was impermissible under the Eighth Amendment. Id.

In 1983, following this Court's decision in Enmund, petitioners filed petitions for post-conviction relief in the Superior Court of Yuma County, Arizona. (106a-115a) The Arizona Supreme Court reviewed the Superior Court's summary denial of relief, and reaffirmed petitioners' sentences of death, this time by the narrow margin of 3-2. (1a-38a) All avenues of appeal in the state courts of Arizona are now exhausted. State v. Raymond Tison No. 4624-2-PC (Ariz. filed Oct. 18, 1984) (Raymond Tison II), reh. denied Dec. 5, 1984; State v. Ricky Tison, No. 4612-2-PC (Ariz. filed Oct. 18, 1984) (Ricky Tison, I), reh. denied Dec. 5, 1984. Warrants have been issued for petitioners' execution on January 30, 1985. (226a, 228a)

In these latest decisions rendered by the Arizona Supreme Court, Justice Feldman, joined by Vice Chief Justice Gordon, strongly dissented from the three-man majority's reaffirmance of petitioners' death sentences. Raymond Tison II, slip op. at 10 (29a); Ricky Tison II, slip op. at 10 (10a). Justice Feldman stated that affirmance of the death penalties was wrong "because the majority's holding is contrary to Enmund v. Florida, 458 U.S. 782, 102 S. Ct. 3368 (1982) [Enmund]", because it does not follow our own rules and authority and because it usurps the function of the trial court." Raymond Tison II at 10.⁴ (Feldman, J., concurring in part, dissenting in part) ("Feldman Opinion") (29a)

Justice Feldman admonished the majority that "Enmund teaches that the death penalty may not be imposed on one who neither killed, attempted to kill nor intended a killing", and pointed out that "three years ago this court held that the record in this case

⁴ Because the majority and dissenting opinions in both Raymond Tison II and Ricky Tison II are virtually identical, reference hereafter will only be made to Raymond Tison II (20a-38a).

did not support the conclusions that are now necessary to comply with Enmund." Id. (29a) (emphasis added) He then quoted from the prior holding of the Arizona Supreme Court set forth above, that petitioners "did not specifically intend that the [victims] die . . . did not plot in advance that these homicides would take place, . . . [and] did not actually pull the triggers on the guns . . ." Ricky Tison I, supra, 129 Ariz. at 343. (57a) See also, Raymond Tison I, supra, 129 Ariz. at 356 ("In upholding the sentence and conviction of Ricky Tison, we said as to both brothers that non-participation in the shooting was not controlling . . .") (70a)

Clearly, execution of petitioners, who did not kill, attempt to kill, or intend to kill, is barred by Enmund. Therefore, this Court should grant Ricky and Raymond Tisons' petitions for a grant of certiorari to review their death sentences.

The Arizona Supreme Court's holding that petitioners may be executed since they might have foreseen that death could occur is a constitutionally impermissible interpretation of Enmund.

- a. Enmund and prior decisions of this Court demonstrate that a tort standard of foreseeability does not satisfy the requirement that, to be executed, petitioners must be proven to have had a purpose to cause death.

The words as well as the holding of Enmund demonstrate clearly that the "intent" that may constitutionally justify the imposition of the death penalty encompasses only a purpose to cause death, and not the virtually limitless standard of "reasonable foreseeability." See id., 458 U.S. at 798 ("It is fundamental that causing harm intentionally must be punished more severely than causing the same harm unintentionally."); id. at 800 ("American criminal law has long considered a defendant's intention - and therefore, his moral guilt - to be critical to the degree of [his] criminal culpability."); id. at 801 ("Putting Enmund to death to avenge two killings that he did not commit and

had no intention of committing or causing does not measurably contribute to the retributive end of ensuring that the criminal gets his just deserts.")

Yet, the three members of the Arizona Supreme Court voting to affirm petitioners' death sentences avoided the required application of Enmund by interpreting that decision to permit execution of anyone who might have foreseen that the events he was involved in could lead to death. See Raymond Tison II, supra, slip op. at 3 ("Intend to kill includes the situation in which the defendant intended, contemplated, or anticipated that lethal force would or might be used or that life would or might be taken in accomplishing the underlying felony.")(emphasis added) (22a). Justice Feldman replied, "If this is an attempt to apply the tort doctrine of foreseeability to capital punishment cases in order to satisfy the Enmund criteria, it must be doomed to failure," and stated "Enmund teaches us that tort foreseeability is not the test." Feldman Opinion at 16-17 (35a-36a). As Justice Feldman put it, a finding that a defendant could have reasonably foreseen a grave risk of death

would undoubtedly have been correct if applied to Mr. Enmund, who sent two armed robbers into a house to commit a robbery and certainly could have foreseen that they might be interrupted during the course of the crime and might kill to save their own lives or to escape.

Feldman Opinion at 17 (36a).

But Earl Enmund was not allowed to be executed because he had no purpose to cause death, just as petitioners here had no purpose to cause death. Therefore, Enmund mandates review of petitioners' improperly imposed sentences of death.

The decisions that underley Enmund also require a grant of certiorari here. See Gregg v. Georgia, 428 U.S. 153, 187 (1976) ("[W]hen a life has been taken deliberately by the offender, we cannot say that the punishment is invariably disproportionate to the crime.") (opinion of Stewart, J., Powell, J. and Stevens, J.) (footnote omitted) (emphasis added); Coker v. Georgia, 433 U.S.

584, 592 (1977) ("In Gregg v. Georgia [supra] the Court's judgment was that the death penalty for deliberate murder was neither the purposeless imposition of severe punishment nor a punishment grossly disproportionate to the crime.")(emphasis added); Lockett v. Ohio, 438 U.S. 586, 624 (1978) (White, J., concurring) ("It violates the Eighth Amendment to impose the penalty of death without a finding that the defendant possessed a purpose to cause the death of the victim.")(emphasis added). Because the Arizona Supreme Court's decision affirming petitioners' sentences violates the Eighth Amendment standards established in these cases, Ricky and Raymond Tison's petitions for review should be granted.⁵

- b. The Arizona Supreme Court's decision to execute petitioners permits punishment unconstitutionally disproportionate to their personal culpability.

The Constitution requires that punishment be proportionate to the crime. See Solem v. Helm, 463 U.S. 277, 77 L.Ed.2d 637, 645 (1983); see also id. at 663, n. 4 (Burger, C., J., with Justices White, Rehnquist, and O'Connor, dissenting) (proportionality review is undertaken in capital cases). Permitting execution where a defendant did not kill, attempt to kill, or have a purpose to kill, yet might have foreseen that his conduct might result in death (as, for example in drunk driving cases) would clearly be disproportionate under the decisions of this Court. See Gregg v. Georgia, supra, 428 U.S. at 187 ("[Capital punishment] is an extreme sanction, suitable to the most extreme of crimes") (Opinion of Stewart, J., Powell, J., and Stevens, J.); Enmund v. Florida, supra, 458 U.S. at 798 ("Enmund did not kill or intend to kill and thus his culpability is plainly different from that of the robbers who killed").

Execution is also totally disproportionate for Ricky and Raymond Tison. In this case, two teenaged boys, with no prior felony records, helped their father escape from prison. Their

⁵ At the very least, the issue of whether a tort standard of foreseeability satisfies the standard set by Enmund is an issue worthy of review by this Court.

father and his confederate then committed murders for which Ricky and Raymond have been found guilty under a theory of felony murder. This petition does not present the issue of whether, without a specific finding by the trial court of an intent or purpose to kill, habitual criminals with extensive records could be executed under any set of circumstances. The issue presented in light of the unique circumstances of this case, is rather, can petitioners' actions, assisting their father's escape from prison and being unable to anticipate or prevent his murderous acts, justify their execution. A grant of certiorari will enable the petitioners to establish that Enmund and related decisions of this Court construing the Eighth Amendment forbid their execution.

A number of recent decisions of lower federal courts also have interpreted Enmund in light of the Eighth Amendment to bar execution under circumstances such as those in this case. See Fleming v. Kemp, C. A. No. 83-8321 (11th Cir., filed Nov. 29, 1984) slip op. at 1204 (death penalty can be imposed in Georgia under Enmund only if sentencing authority finds defendant guilty of causing "the victim's death with malice aforethought") (224a); Jones v. Thigpen, 741 F.2d 805, 816 (5th Cir. 1984) ("Jones was proven and found to have participated in a robbery during which the owner of the store was killed, but he was neither proven nor found to have done the killing or intended that it take place. Enmund's interpretation of the Eighth Amendment requires that we vacate Jones' death sentence . . ."); Reddix v. Thigpen, 728 F.2d 705, 708; reh. denied 732 F.2d 494 (5th Cir. 1984), ("The eighth amendment, then, allows the state to impose the death penalty only if it first proves that the defendant either participated directly in the killing or personally had an intent to commit murder."); Bell v. Watkins, 692 F.2d 999, 1012 (5th Cir. 1982) reh. denied, Feb. 28, 1983, (Enmund held "that under the eighth amendment a

death sentence may not be imposed on someone who neither committed the homicide, attempted to commit the homicide, nor participated in the plot to kill the victim.").

Various state courts have reached the same conclusion. See People v. Tiller, 447 N.E.2d 174, 185 (Ill. 1982) cert. denied, 461 U.S. 944 (1983), ("[D]efendant was not shown to have planned or in any manner participated in the killings, and under the authority of Enmund the death sentences must be vacated."); People v. Jones, 447 N.E.2d 161, 173 (Ill. 1982) ("With respect to the death of Richard Stolz, there is nothing in the record that shows that defendant killed, attempted to kill, or intended to kill the victim, and the decision in Enmund requires that the death sentence be vacated."); Hall v. State, 420 So.2d 872, 874 (Fla. 1982) (In affirming death sentence, court stated "Enmund was an aider and abettor only to the underlying felony. Hall, on the other hand, was an aider and abettor to the homicide as well as the underlying felony. There is no doubt in the Court's mind that Hall intended Mrs. Hurst's death."); Feldman Opinion at 16 (35a) ("The weight of authority indicates, however, that where the defendant's participation is only in the underlying felony, and where he does not intend that the victim be killed and does not actually participate in the killing, the death penalty may not be imposed.") Because the decision of the Arizona Supreme Court imposes an unconstitutionally disproportionate sentence upon petitioners, and because its decision is in conflict with the state and federal decisions cited above, this Court should grant review.⁶

⁶ "[T]he important need for uniformity in federal law," Michigan v. Long, 463 U.S. 1032, 77 L.Ed.2d 1201, 1214 (1983) argues for review in this case, particularly where the issue in dispute concerns the permissibility of execution.

- c. "Foreseeability" cannot be an aggravating circumstance justifying petitioners' execution because it is an unconstitutionally vague and broad standard.

Enmund's direction that a defendant must be found to have killed, attempted to kill, or intended death before execution is permissible effectively establishes an additional aggravating circumstance that must be found to exist in any case where the State seeks to impose a sentence of death. The tort standard established by the Arizona Supreme Court is both too broad and too vague to constitutionally perform this function. Someone who drinks too much at a party and then drives home, or someone who keeps a gun in his bedside table might also "reasonably foresee" that death could result from his actions. Surely, no state may constitutionally impose capital punishment for deaths resulting from drunk driving. Such an interpretation of Enmund would both broaden its standards into meaninglessness, and encompass such a wide spectrum of circumstances as to be unconstitutionally vague. See California v. Ramos, 463 U.S. 992, 77 L.Ed.2d 1171, 1180 (1983) ("In Gregg itself the joint opinion suggested that excessively vague sentencing standards might lead to the arbitrary and capricious sentencing patterns condemned in Furman"); Zant v. Stephens, 462 U.S. 862, 77 L.Ed.2d 235, 249-50 (1983) ("[A]n aggravating circumstance must genuinely narrow the class of persons eligible for the death penalty and must reasonably justify the imposition of a more severe sentence"); Godfrey v. Georgia, 446 U.S. 420, 433 (1980) (death sentence reversed because aggravating circumstance was so broad that "there is no principled way to distinguish this case, in which the death penalty was imposed, from the many cases in which it was not.")

If Ricky and Raymond Tison can constitutionally be executed under the standard set by Enmund, then the circumstances of any murder case will satisfy the standard, and Enmund has said nothing. Certiorari should be granted for this reason.

- B. This Court should grant certiorari because the Arizona Supreme Court majority ignored its earlier interpretation of the evidentiary record, and drew contrary conclusions on the same record, all in violation of the principles of Presnell v. Georgia, 439 U.S. 13 (1978) and Cole v. Arkansas, 333 U.S. 196 (1948)

The Arizona Supreme Court also attempted to avoid applying the holding of Enmund by ignoring its conclusions in Ricky Tison I, supra, 129 Ariz. at 545, 633 P.2d at 354, that petitioners "did not specifically intend that the [victims] die, that they did not plot in advance that these homicides would take place, or that they did not actually pull the triggers on the guns which inflicted the fatal wounds . . .", (57a) and coming to the directly contrary conclusion, upon precisely the same evidentiary record, that petitioners "intended" to kill. See Feldman Opinion at 10-11 (29a-30a). The Arizona Supreme Court's finding of "intent" in Raymond Tison II was pursuant to its erroneous interpretation of the intent standard as set forth in Enmund and constitutes grounds for a grant of certiorari, as argued above.

Certiorari should also be granted because the Arizona Court has ignored its interpretation of the record made before this Court's decision in Enmund and has now, after Enmund, drawn contrary conclusions on the same evidentiary record, in violation of principles established by this Court. In Presnell v. Georgia, 439 U.S. 14 (1978), the Court upheld the principle that "to conform to due process of law, petitioners were entitled to have the validity of their convictions appraised on consideration of the case as it was tried and as the issues were determined in the trial court." Id. at 16, quoting from Cole v. Arkansas, 333 U.S. 196, 201-202 (1948). The dissenters were in equal agreement with this principle of law. See 439 U.S. at 22, Burger, C. J., Powell, J., and Rehnquist, J., dissenting. Presnell held that "[T]hese fundamental principles of procedural fairness apply with no less

force at the penalty phase of a trial in a capital case than they do in the guilt-determining phase of any criminal trial." 439 U.S. at 16.

In his dissenting opinion in the cases at bar, Justice Feldman fairly summarized the evidence of "intent to kill" that appears on the record: "there is no direct evidence that either of the brothers intended to kill, actually participated in the killing, or was aware that lethal force would be used against the kidnap victims." Feldman Opinion at 11 (30a). Justice Feldman also noted that the only evidence before the Court of petitioners' presence at the killings indicated that petitioners "had been sent back to the victims' car by their father and were some distance away from the actual place at which the killings occurred," and that there was no evidence at all that petitioners could have stopped the killings. *Id.* at 14-15. (33a-34a) Finally, Justice Feldman quoted Raymond Tison's uncontradicted statement that:

"We had an agreement with my dad that nobody would get hurt . . . And when this [killing of the kidnap victims] came about, we were not expecting it. And it took us by surprise as much as it took the family [the victims] by surprise because we were not expecting this to happen. And I feel bad about it happening. I wish we could [have done] something to stop it, but by the time it happened, it was too late to stop it."

Feldman Opinion at 17-18, (36a-37a) quoting Aggravation Hearing and Sentencing Transcript, March 14, 1979, at 159. (86a)

To permit petitioners to be executed in the face of the uncontradicted evidence in the record would violate a constitutional principle recently and unanimously reaffirmed by this Court in *Presnell*.

Significantly, even in its December 4, 1984, opinions, the Arizona Supreme Court's three man majority acknowledged that "the evidence does not show that petitioner killed or attempted to kill." *Raymond Tison II*, *supra*, slip op. at 3 (22a); *State v. Ricky Tison II*, *supra*, slip op. at 3 (3a). That Court's own earlier evaluation of the record before this Court's decision in *Enmund*, as well as the uncontradicted evidence on the record, demonstrate

that petitioners had no purpose to kill, or intent to kill, as those words are used in *Enmund*. Therefore, the Arizona Court's equation of "intent to kill" with tort foreseeability, and its latest affirmance of petitioners' death sentences, require that a writ of certiorari be granted by this Court.⁷

⁷ In their Petitions for Post-Conviction Relief, Ricky Tison and Raymond Tison raised again the issues each had raised in the course of his direct appeal. Although petitioners have raised many similar issues, each has also raised issues that are unique to his own particular circumstances and to the proceedings in his own trial. See Petition for Post-Conviction Relief in *State v. Ricky Wayne Tison*, No. 9299, at 1-2 (106a-107a); Petition for Post-Conviction Relief in *State v. Raymond Curtis Tison*, No. 9299, at 1-2 (111a-112a). They also raised issues in the petitions that had not been raised on direct appeal. See Memorandum in Support of Petition for Post-Conviction Relief in *State v. Ricky Wayne Tison*, No. 9299 (116a-140a); Memorandum in Support of Petition for Post-Conviction Relief in *State v. Raymond Curtis Tison*, No. 9299 (141a-162a). Relief was denied on all issues. *State v. Ricky Tison II*, slip op. at 5, 9 (5a, 9a); *State v. Raymond Tison II*, slip op. at 5, 9 (24a, 28a).

The Court is urged to grant Ricky and Raymond Tison's petition for a writ of certiorari in order to review these issues which individually and together provide additional reasons for the vacation of petitioners' death sentences and reversal of their convictions.

CONCLUSION

Ricky and Raymond Tison, young men without prior felony records, have been sentenced to death for killings committed by others, which they neither intended nor could prevent. Their sentences have been affirmed by a 3-2 vote, in opinions that mirror a conflict between Arizona and other states concerning the constitutionality of execution under such circumstances. In light of the unusual facts of this case, and in view of this Court's holdings in Gregg v. Florida and related decisions, Petitioners request that this Court grant their joint petition for writs of certiorari.

Respectfully submitted this the 16th day of January, 1985.

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APPENDIX

Exhibit A	State v. Ricky Wayne Tison, No. 4612-2-PC (Ariz., filed Oct. 18, 1984)	1a
Exhibit B	State v. Raymond Curtis Tison, No. 4624-2-PC (Ariz., filed October 18, 1984)	20a
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Exhibit F	Denial of Motion for Reconsideration in State v. Ricky Wayne Tison, No. 4612-2-PC (Ariz., filed December 4, 1984) and in State v. Raymond Curtis Tison, No. 4624-2-PC (Ariz., filed December 4, 1984)	73a
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Exhibit R	Appellant's Supplemental Brief in <u>State v. Ricky Wayne Tison, Supreme Court No. 4612-2-PC</u>	165a
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Exhibit T	Motion for Reconsideration in <u>State v. Ricky Wayne Tison, Supreme Court No. 4612-2-PC</u>	195a
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Exhibit V	<u>Fleming v. Resp. C. A. No. 83-8321 (11th Cir., filed Nov. 29, 1984)</u>	203a
Exhibit W	Warrant for Execution of Ricky Wayne Tison, issued December 18, 1984	236a
Exhibit X	Warrant for Execution of Raymond Curtis Tison, issued December 18, 1984	238a

Exhibit A

R. W. WAYNE TISON and
RAYMOND CURTIS TISON vs.
STATE OF ARIZONA
No. 84-6075

EXHIBITS 1 - 6

1	IN THE SUPERIOR COURT OF THE STATE OF ARIZONA	
2	IN AND FOR THE COUNTY OF YUMA	
3		
4	THE STATE OF ARIZONA,) No. 9299
5	Plaintiff,	
6	vs.	
7	RAYMOND CURTIS TISON	
8	and RICKY WAYNE TISON,	
9	Defendants.	
10		
11		
12	Arizona State Prison	
13	Florence, Arizona	
14	February 1, 1979	
15		
16		
17		
18	<u>STATEMENT OF RICKY TISON</u>	
19		
20		
21		
22		
23		
24		
25	(COPY)	EXHIBIT 1

JANET EMERT
Official Court Reporter-RPR
Florence, Arizona

1 THE STATEMENT OF RICKY TISON was taken on
2 February 1, 1979, at 4:05 o'clock p.m. at the offices of
3 the Diagnostic Center, Arizona State Prison, Florence,
4 Arizona, before Janet Emmert, Official Court Reporter,
5 Pinal County Superior Court, Division II, Florence,
6 Arizona.
7
8
9
10 APPEARANCES:
11
12 FOR THE PLAINTIFF: MR. MICHAEL IRWIN
13 County Attorney
14 P. O. Box 1049
15 Yuma, Arizona 85364
16
17 FOR THE DEFENDANT: MR. ROBERT C. BROWN
18 Attorney at Law
19
20
21
22
23
24
25

1 Arizona State Prison
2 Florence, Arizona
3 February 1, 1979
4
5 RICKY TISON,
6 was examined and testified as follows:
7
8 EXAMINATION
9 BY MR. BROWN:
10 Q Okay. You know me, right, Ricky?
11 A Yes.
12 Q Okay. You know I'm Randy's attorney?
13 A Yes.
14 Q Okay. And you are represented by Mike Beers?
15 A Yes.
16 Q Who is not here?
17 A Yes.
18 Q Okay.
19 A I am quite aware of that.
20 Q But Mike Irwin is here, who is the Yuma County
21 Attorney.
22 A Yes.
23 Q And I understand that you and your brother
24 Raymond have made a plea agreement and have entered a plea
25 of guilty to one count of murder, and that part of the
agreement is that you will testify against Randy, is that

1 right?

2 A Yes.

3 Q Okay. You understand that in that case I no
4 longer can consider you as a co-defendant.

5 A Yes.

6 Q That I consider you as a State's witness against
7 my client Randy.

8 A Yes.

9 Q And so when that happens, I get an opportunity to
10 interview you.

11 A Yes.

12 Q Now any time during the interview, if you don't
13 understand a question --

14 A I'll ask you what you mean.

15 Q You ask me what I mean, and then let's get it
16 cleared up.

17 A Okay.

18 Q If you don't think the question is stated
19 fairly, or you think -- you know, anything bothers you
20 about it, okay?

21 A As long as you ask them in layman's terms, I'll
22 pretty well be able to understand what you are saying.

23 Q Okay. But what I am trying to tell you is if you
24 don't say something, I'm going to assume that you under-
25 stood what I asked you.

1 A Yes.

2 Q Okay. And I'm sure if at any time you want to
3 ask Mr. Irwin something, why, you know, why don't you just
4 stop and go ahead. Okay?

5 A Okay.

6 Q Now let's go back and talk about before the
7 escape. Okay?

8 A Before the escape?

9 Q Before the escape.

10 A Okay.

11 Q When, Ricky, did you first become involved in
12 planning for an escape?

13 A For that particular escape? Or just --

14 Q In planning an escape for your dad.

15 A Planning an escape? Well, it's been about a
16 couple of years.

17 Q So you've been in on plans for an escape for a
18 couple of years, is that right?

19 A Yes. Well, thoughts, you know.

20 Q Okay. And who did you plan with?

21 A He, Ray and my dad.

22 Q You and who?

23 A Ray, my brother.

24 Q How about Donnie?

25 A No. Donnie wasn't in the plans too often. He

1 knew more or less what was going on, but he just --

2 Q What about Joe?

3 A Joe? Well, he was in on quite a lot of it.

4 Q Now as I understand it, Joe purchased that white
5 Lincoln Continental over in New Mexico, right?

6 A That is what I've heard. I couldn't say --

7 Q You don't know?

8 A -- for sure one way or the other.

9 Q Okay. When was the first time you saw it and
10 found out about it?

11 A When he turned it over to us.

12 Q When did he turn it over to you?

13 A It was a couple of months before the escape.

14 I couldn't give you an exact date.

15 Q Okay. And at that time, what was the escape plan?

16 A At that time? Damn! I -- I'm not sure if there
17 was one going on at that time. There might have been. But,
18 like, you know, because dad made the deal with Joe to get
19 that stuff, with him. You know, it was something --

20 Q What was this deal?

21 A Huh?

22 Q What was his deal?

23 A Well, I would just as soon really not get into
24 it because I've got to live among these people around here
25 and they might not appreciate that too much.

1 Q Well, let me point out to you, you are not going
2 to have much choice but to get into it.

3 A Well, --

4 Q You are going to testify on the stand down in
5 Yuma, and I am going to ask you questions just like I am
6 asking you now.

7 A Well, I would just as soon you ask them there.

8 Q Huh?

9 A I would just as soon you ask them there.

10 Like I can't see any real bearing on whatever that would
11 have on the case or anything.

12 Q Okay.

13 MR. IRWIN: Since his attorney isn't here -- I'm not
14 quite sure of the circumstances, although I was told by
15 Roy that he had been contacted -- maybe Vic told me, I
16 can't remember -- and for some reason he didn't know for
17 sure whether he would be here or not. But if this is
18 important to Ricky, he may be down in Yuma before the
19 trial and --

20 MR. BROWN: We will catch it then.

21 MR. IRWIN: We can catch it before the trial down
22 there if you think it's necessary.

23 MR. BROWN: What I wanted to go into with him was
24 Adams and Joe and Hudson.

25 MR. IRWIN: I personally have an objection because

1 it's obvious that Ricky at this time doesn't have his
 2 lawyer, and we can go into other parts of it.
 3 MR. BROWN: Okay.
 4 Q (MR. BROWN) Joe got you the guns, is that right?
 5 A Yes.
 6 Q Okay. And how long was that before the escape?
 7 A Oh, just -- it was still -- you know, I think we
 8 got the -- I believe we got the guns before we got the
 9 car. I couldn't give you the exact date on it or any-
 10 thing.
 11 Q Excuse me just a moment.
 12 Okay. When did you decide on this particular escape
 13 plan?
 14 A It was brought up a week before the actual escape.
 15 Really, the decision to go ahead with it was that Saturday.
 16 Q Who was present when it was first brought up?
 17 A When it was first brought up, I believe it was
 18 just me and Ray and -- no, I don't believe I was there. I
 19 was there Saturday, the Saturday when we decided to go
 20 with it.
 21 Q Wait a minute.
 22 A It was me and Donnie.
 23 Q Okay. The week before, who brought it up, do
 24 you know?
 25 A Ray told me about it. I couldn't tell you who

1 actually brought up the --
 2 Q Had you and Ray talked about it before and
 3 decided to do it?
 4 A We talked about it during the week.
 5 Q During that week?
 6 A Yes.
 7 Q And apparently Ray discussed it with your dad?
 8 A Yes.
 9 Q Or somebody did?
 10 A Yes.
 11 Q And then Ray came back and told you that it was
 12 probably on, or what?
 13 A Well, no. It was just something that was said
 14 during the discussion of the escape -- of, you know, an
 15 escape, and I believe it was just a comment made that,
 16 you know, just go right out, you know, and just do it.
 17 And the way -- you know, the way it sounded, it just
 18 sounded like it might work. More or less, Ray remembered
 19 it and told me about it, and we more or less all thought
 20 about it that week, and that Saturday made up our minds
 21 to go at it.
 22 Q Now did Donnie get into it?
 23 A Donnie? He just more or less decided to go that
 24 Saturday. Me and him and -- me and him visited dad that
 25 weekend.

1 Q Okay. Then this is the day before the escape,
2 right?

3 A Yes.

4 Q And you and your dad and Donnie talked it over?

5 A Yes.

6 Q Now when did you first know that Randy Greenswalt
7 was going to be in on the escape?

8 A That weekend, you know, in front of -- I believe
9 it was mentioned the weekend before that, the fact that
10 he holds the position in the yard office there. I
11 couldn't tell you for sure on that either, just the fact
12 it was mentioned that Saturday.

13 Q Did your dad say how Randy was going to help or
14 what he was going to do?

15 A Well, he just mentioned, you know, the fact that
16 he is up there in the yard office, like that would just
17 about center things up right there. Other than that, if
18 no one was there, just by standing outside that window,
19 the escape couldn't actually come off very well.

20 Q Did you get the car that week?

21 A That week?

22 Q Yes.

23 A (No answer.)

24 Q When did you get the car?

25 A We had had the car for a couple of months.

1 Q Yes, but it was up at Bob Adams, wasn't it?

2 A It was stored there, yes.

3 Q That's what I'm asking. When did you get the car?

4 A It was I believe gotten that weekend.

5 Q The Saturday after you talked it over with your
6 dad and decided to do it?

7 A Yes. I couldn't tell you for sure because I
8 stayed in Casa Grande.

9 Q Okay. How about the guns? Where were they?

10 A They were in the car.

11 Q They were in the car already?

12 A Yes.

13 Q Okay. I think you told somebody that you cut
14 down one of the guns?

15 A (Witness nodding head.)

16 Q Which one?

17 A All of them.

18 Q All of them?

19 A I worked on all of them, yes.

20 Q Where did you learn to --

21 A I just more or less tinker with everything. I
22 like working on just about anything. I have no perfect --
23 I have no degree in gunsmithing or anything. I just more
24 or less see what is wrong and what is not.

25 Q Okay. Now Sunday morning, how did you get to

1 Florence?

2 A I drove the Galaxie up from Casa Grande.

3 Q You drove the Galaxie? Who was with you?

4 A No one was with me. Donnie and Ray came down in
5 the Lincoln that morning.

6 Q Where did you meet them?

7 A At the hospital.

8 Q Did you see them come to the hospital?

9 A Yes.

10 Q You were there first?

11 A Yes.

12 Q Which way did they come from?

13 A (No answer.)

14 Q Did they come from down -- or down Adamsville
15 Road?

16 A They come from, you know, Casa Grande. I couldn't
17 tell you which way they took.

18 Q Well, no, let me show you something. Let's --

19 MR. BROWN: Here, Jan. We should have these for the
20 last one and I'll start over on this one.

21 THE COURT REPORTER: Why don't you make it "D"?

22 Q (MR. BROWN) Let's make it Exhibit D, and will
23 you come up here for a second?

24 Let's say that these two marks are the overpass over
25 to Coolidge. Do you know what I am talking about?

1 A Yes.

2 Q You come out of Coolidge, you come over the
3 railroad tracks and you come down and head for Florence,
4 right?

5 A Yes.

6 Q And you come down this road like this, and you
7 can make a turn here and come into Florence, the main part
8 of Florence.

9 A Yes. That is the main road.

10 Q Out here Adamsville Road takes off and it comes
11 down like this, comes down behind a hill.

12 A That is the road they were on when they came to
13 the hospital.

14 Q Okay. They were on Adamsville Road, right?

15 A Yes. I couldn't tell you if that was the name of
16 it or not, but that is the road they came on.

17 Q Okay. That is the one they came on.

18 A The one that goes in front of the hospital.

19 Q So they approached the hospital from the east?

20 A I guess.

21 Q From the Casa Grande side?

22 A Yes, I believe so.

23 Q Okay. Now there is another highway -- if you come
24 on into Florence, you come on down here, and here's Butte
25 Avenue. Okay? And the courthouse sits over in here, a

1 block off, and the prison sits out here like this. And
 2 this is the highway that goes on up to Apache Junction.
 3 A Yes.
 4 Q Okay. Do you know where I am talking about?
 5 A Yes.
 6 Q Okay. To the best of your knowledge, was that
 7 white Lincoln over in the area around Butte and the highway
 8 that goes to Apache Junction?
 9 A I don't believe it was, no.
 10 Q It wasn't?
 11 A I don't think it was.
 12 Q That morning?
 13 A (Witness shaking head.)
 14 Q Okay. What did you do then? You met at the
 15 hospital, what did you do?
 16 A We got in the -- we had to go and get another box
 17 because they brought this kind of big, huge box that was
 18 kind of all wrecked up and everything, and we had to get
 19 another one of them. We took off in both cars -- yes,
 20 because there was a guy standing at the hospital door
 21 there and we didn't, you know, feel like it was too smart
 22 of a move just to stay there and start switching things.
 23 But we drove both cars out. We never met anywhere after
 24 that. We just went there and got another box.
 25 Q You went into where?

1 A I believe it was Circle K that we got the box at.
 2 Q Yes.
 3 A Yes, I'm pretty sure it was.
 4 Q Okay.
 5 A Okay. And then we came back to the hospital, and
 6 that is where we switched the cars over, switched every-
 7 thing in the car.
 8 Q Could you see them all the time when you went to
 9 the Circle K?
 10 A See who?
 11 Q The guys in the other car.
 12 A No.
 13 Q Okay.
 14 A That is why I say, I really don't think --
 15 Q But you don't know?
 16 A No, I couldn't say for sure.
 17 Q So you got to Circle K, you got a box at the
 18 Circle K and you went to the hospital?
 19 A Yes.
 20 Q And you switched everything?
 21 A Yes, switched all the guns, just the guns that
 22 was in the box. See, everything was already loaded in the
 23 Lincoln, and the guns that were in the box and stuff went
 24 over into the Galaxie, and that is when we took Ray up to
 25 the prison for the visit. You know, he was going to get

1 dad up into the yard there to visit and then we were
2 going to drop him off and come back a half hour later,
3 and then we would pull up and just give the horn at dad.
4 And, you know, dad was supposed to be already up there and
5 everything.

6 Okay. Then we walked on into the yard office, to
7 that little lobby right there, and then dad -- you know,
8 he tired it out so, you know, we wouldn't be there too
9 much ahead of him or anything. And that is when we sat
10 in there and I started filling out the visitation slip,
11 and decided not to. And Donnie filled one out and I went
12 over and got a drink of water.

13 Q Donnie filled one out?

14 A Not completely. I believe all he got on it was
15 his name.

16 Q Okay.

17 A And then we -- okay. Then I came back and my
18 back is facing the glass window.

19 Q Okay.

20 A And the box is right there on the table, you
21 know. Okay. Then that is when I threw the cover back and
22 took the shotgun out and pointed it through that little
23 hole at the guard. And that is more or less when every-
24 thing started going down, right then.

25 Q Okay. You got out of the prison, right?

1 A Yes.

2 Q You got in the Galaxie?

3 A Yes.

4 Q Where did you go?

5 A To the hospital.

6 Q What did you do?

7 A Well, that is when we took the guns out that --
8 out of the Galaxie. I put them in the Lincoln, and
9 everybody got in the Lincoln and took off and went back
10 down that road, you know, and got back on the main highway
11 and went up to Attaway and went down on that till we got
12 to Hunt. And then we made a left on that and just -- after
13 that, I couldn't tell you what the roads were we took.
14 But we went -- you know, we went way up towards these
15 orchards and stuff up there.

16 Q Okay. Did you ever stop anywhere?

17 A No.

18 Q Okay. After you got past Phoenix --

19 A Yes.

20 Q Okay? Where did you go?

21 A Well, we -- okay. We went down cruising a few
22 more roads, but we came to like this old abandoned house.

23 Q Well, let me ask you, do you know where the
24 Brenda Cutoff is out there?

25 A The what?

1 Q The Brenda Cutoff, out the Buckeye -- out on
2 I-10?
3 A No.
4 Q Did you ever cross the freeway after you got
5 past Phoenix?
6 A I believe we did.
7 Q Did you get on it a little ways and then back off
8 it?
9 A The I-10?
10 Q Yes.
11 A Yes. That is when we came up to the Phoenix --
12 Q Okay. But after you ducked off on Baseline,
13 didn't you go out there by the orchards and the fields?
14 A Yes. We were by the orchards and fields.
15 Q And then you went west? You went west out that
16 way?
17 A Yes.
18 Q Okay. After you got past that major Phoenix
19 area -- okay? Did you come into some more little towns?
20 A There was one other town, to my recollection,
21 we came through. It has this -- you know, just a main
22 road goes right through it, and I don't think we went
23 through any other towns after that.
24 Q Okay. Did you ever stop anywhere?
25 A No, I don't believe so.

1 Q About what time was this?
2 A I couldn't tell you.
3 Q What time did you get to the prison?
4 A Me and Donnie showed up to the prison at nine.
5 Me and Donnie came back to the prison after dropping Ray
6 off at nine. And after that, I couldn't tell you what
7 time it was when we left, or anything else.
8 Q How far out in the desert did you go?
9 A Quite a ways.
10 Q Then did you go west? Or did you go west and
11 then bend back sort of south?
12 A I couldn't give you an exact ratio, but it was --
13 after we got on this one road, it was one super long road,
14 and a lot of curves --
15 Q Dirt?
16 A In and out. Yes.
17 Q Okay.
18 A And we went into some mountains and so forth.
19 Q Okay. You came out of the mountains into a big
20 valley?
21 A Yes. I guess. You know, kind of farmed-out
22 land, you know, used to be. It's all desert.
23 Q It used to be, but now it's broken down?
24 A Yes.
25 Q Some old house trailers out there?

1 A I guess.
 2 Q You didn't see any of those?
 3 A No, not --
 4 Q Busted down stuff?
 5 A (No answer.)
 6 Q Okay. You came to this abandoned house?
 7 A Yes.
 8 Q And can you describe that house for me?
 9 A Well, really ratty. You know, messed up. It's
 10 been like that -- the way it looks, it's been like that
 11 for quite a few years.
 12 Q Did it have a barn?
 13 A Yes, like a big metal shed on it. That is where
 14 we kept the car at.
 15 Q Okay. Were there any other houses around?
 16 A Yes. There was one down the road a ways.
 17 Q Were they houses or trailer houses?
 18 A This one was just like a -- you know, it was --
 19 I believe it was a house.
 20 Q Okay.
 21 A They had this big like huge canopy for just
 22 tractors and so forth. But that is just about all I can
 23 remember about it.
 24 Q Okay. And there was another house not too far
 25 away?

1 A Yes. There were some other houses, because at
 2 night you could see lights from other houses.
 3 Q Then if you went on down that road, did you come
 4 to a little store and a bar?
 5 A Yes.
 6 Q Does the name "Whispering Sands" ring any bell as
 7 being written on any of it?
 8 A Whispering Sands? No.
 9 Q Okay. Did you ever go in the bar?
 10 A We went in -- okay, we came up to this town. It
 11 was just me and Ray at this time getting some supplies,
 12 and we came to this town looking for a station. And this
 13 particular bar, you know, said "Gas" and everything. We
 14 couldn't see no gas pumps or nothing. So I walked into
 15 this bar, and there was nothing there but a bar.
 16 Q What did the building look like? Was it a white
 17 building?
 18 A I couldn't say if it was white or not. It was
 19 old.
 20 Q Old?
 21 A Yes. I couldn't tell you if it was --
 22 Q Wood?
 23 A I believe so.
 24 Q Had a pitched roof?
 25 A A what?

1 Q Pitched roof?

2 A I couldn't tell you.

3 Q Was there a little grocery store there, too, close
4 to it?

5 A Well, it said -- you know, like it said "Groceries"
6 and all this on it. It said that, but when I walked in
7 the door, all it was was a bar. Then down the road was a
8 little store.

9 Q How far down the road?

10 A I would say about a mile, a mile and a half.

11 Q About a mile, mile and a half down was a grocery
12 store?

13 A Yes.

14 Q Which way? Going away from your camp or towards
15 your camp?

16 A Going away from our camp.

17 Q Going away from your camp?

18 A Yes.

19 Q Okay. Back towards I-8, kind of?

20 A Yes. The road eventually -- I mean it more or
21 less paralleled it at that time, the freeway. But it did
22 curve off to go to the freeway, yes.

23 Q Okay. How long did you stay there?

24 A I believe a couple of days, two or three days.

25 Q Do you remember how many nights you slept there?

1 A Well, I think two. You know, I am pretty sure
2 we did. I can remember staying there a while.

3 Q You think you slept there two nights? What?
4 You left there the third night?

5 A Yes. It was either the second night or the third
6 night we left. But, you know, I believe we were there for
7 a couple of days.

8 Q Okay. When you left, who was driving?

9 A Donnie was driving as we first left, driving the
10 car. And then like him and Randy switched off every once
11 in a while in the driving.

12 Q Where did you go?

13 A Well, that road you just talked about, the one
14 that parallels the freeway. Okay. Well, where it curves,
15 there is like a big gin there, but then it also -- you
16 can just keep going straight and there is like a dirt
17 road. It's not really used a whole lot, but there is a
18 dirt road there. And we hit that and it went on for a
19 little ways till it came to a truck route.

20 Q By "a truck route," do you mean an access road
21 next to the freeway?

22 A I would think so.

23 Q Did you see cars going on the freeway beside
24 you?

25 A I couldn't tell you. I don't remember if I did

1 or not.

2 Q Okay.

3 A It was just -- you know, it was referred to as a

4 truck route. My dad referred to it as a truck route.

5 Q Okay. Which way did you turn on it? Right?

6 A Yes.

7 Q Where did you go?

8 A We went down there a little ways and had a

9 blowout on the Lincoln then.

10 Q Okay. Do you remember any signs as you went, or

11 anything?

12 A Particular signs? No.

13 Q Do you remember a sign that said "Dome Valley"?

14 A No. I can't say I do.

15 Q You finally got on this other paved road then,

16 huh?

17 A Yes. This was the truck route I'm talking about

18 now. It's paved road.

19 Q Okay. Is that the one you had the blowout on?

20 A Yes.

21 Q And what happened when you had the blowout?

22 A Well, we drove on it for a little ways to go up

23 to -- we wasn't making any progress doing that at all.

24 And so we decided to pull over a car and, you know, take

25 their car from them. And that is -- you know, that is

1 when the Lyons family came up.

2 Q Okay. Now who decided that you were going to flag

3 down a car, or pull over a car?

4 A Well, I believe my dad mentioned it. You know,

5 I believe he said, "Well, you know, let's flag a car down."

6 You know, it wasn't really a hard decision. You know,

7 everyone was more or less for it. You know, it wasn't

8 anything that was argued over or anything.

9 Q Let me ask you this:

10 While you were out there in this abandoned house, and

11 et cetera, who was in charge?

12 A Dad more or less ran everything.

13 Q Dad? How did he set it up? Did he set it up

14 pretty efficient or --

15 A Well, what do you mean? I don't know what you

16 mean, really.

17 Q How did he go about running things?

18 A Well, more or less just deciding -- you know,

19 figuring out what we were going to do next. Like he

20 pretty well knew this country.

21 Q He pretty well assigned everybody to what they

22 were supposed to do?

23 A He never really assigned. The only real job

24 anybody had was sentry duty. And we more or less all

25 decided who wanted to do that.

1 Q What he called it was sentry duty?

2 A Yes, I believe so. That is how I referred to it.

3 I don't know exactly how he referred to it.

4 Q Okay. What happened when you decided to flag

5 down a car? Did everybody get out of the car?

6 A Just the man and the woman got out at first.

7 Q Well, wait a minute. No. Let me go back.

8 You guys just decided you were going to flag down a

9 car, right?

10 A Yes.

11 Q Where are you?

12 A On that truck route.

13 Q Are you in the car or out of the car?

14 A Out of the car, I guess. You know, we got out of

15 the car once or twice, you know, to check the tire out

16 and everything. I couldn't tell you exactly where we

17 were, if we were in or out when we decided upon this.

18 Q I assume you finally stopped, right?

19 A Yes.

20 Q Okay. Did everybody pile out of the car then, or

21 what?

22 A Yes. Everyone got out to look at the tire and

23 everything.

24 Q Okay. And who flagged the car?

25 A Ray did the actual -- you know, the actual

1 flagging it down.

2 Q Where was everybody else at this time?

3 A Off to the side of the road, down into the

4 gutter.

5 Q Okay. Were you behind the Lincoln or in front

6 of the Lincoln?

7 A Behind it.

8 Q Behind it?

9 A (Witness nodding head.)

10 Q Okay. How many cars did you flag?

11 A We flagged I believe just one -- one, you know,

12 before the Lyons came along. And it just went by.

13 Q Okay. And the Lyons came. What did they do?

14 A They went in front of the car, you know. They

15 went ahead and they were pulling off. They got in front

16 of the car and turned around and went back of it and

17 turned around again and pulled up behind the Lincoln.

18 Q And what happened then?

19 A That is when the man and the woman got out, the

20 Lyons. They got out, and that is when, you know, me and

21 Donnie and then Sandy and dad got out and started to come

22 up to the side of their car.

23 Q Okay. Did they walk forward to where Ray was?

24 A Yes.

25 Q Both of them?

1 A Yes.

2 Q Okay. Did Ray talk to both of them?

3 A They were -- I believe they said something. I

4 couldn't tell you.

5 Q Did it look like he was talking to the two of

6 them?

7 A You know, there wasn't a real long time distance.

8 I mean just as soon as they got out, we started advancing

9 forward. I don't see where they had much time to say

10 anything.

11 Q Okay. Where were the man and the woman? Were

12 they standing up by Ray?

13 A At this time they were up -- yes, up close to

14 Ray.

15 Q Were they standing pretty close together, or far

16 apart, or what?

17 A I couldn't tell you for sure.

18 Q You don't remember?

19 A No.

20 Q Okay. And then you guys came up. What? Did you

21 come up to where Ray was or --

22 A We came up towards the side of the car. And then

23 like, you know, just -- just kind of spread out. He and

24 Donnie, I guess we might have been about ten yards apart.

25 And we came up on to like the passenger side of the car,

1 and then dad and Randy came up on the other side. Just,

2 you know, got up to them. I couldn't tell you how close

3 we were to the people or not. But then like, you know,

4 Mrs. Lyons, she was coming back, you know, because when

5 she seen everything coming down, the guns and everything,

6 she went to get her child. And like dad was coming up

7 from behind them, and she -- you know, dad more or less

8 had his shotgun leveled off at her at that time. And she

9 kept walking toward him and, you know, finally she did

10 stop. But, you know, dad went ahead and let her get her

11 child out of the car.

12 Q Okay. What happened then?

13 A That is when they, you know -- the other girl got

14 out of the car, too. Okay. Then they were put into the

15 back seat of the Lincoln, and Donnie, you know, was

16 watching them. Ray was driving the Lincoln, and me and

17 dad and Randy got into the Datsun, I believe is what it

18 was, and we turned -- you know, we turned around on the

19 road and went back to that other dirt road that we passed

20 earlier.

21 Q Did Ray turn the Lincoln around?

22 A Yes.

23 Q Okay. And then what happened?

24 A Okay. We went down this dirt road that we did

25 pass earlier. We remembered it being there. We went down

1 it and took it to another dirt road, and we turned down
2 it, and that is when --

3 Q When you turned off the highway on this first
4 dirt road, you turned left, right?

5 A Yes.

6 Q And when you turned off that road onto the
7 other one, which way did you turn?

8 A Right.

9 Q Okay. And how far down that road did you go?

10 A Just a little ways, I believe. I don't believe
11 we went very far down it at all.

12 Q Which vehicle was in front?

13 A The Lincoln was in front.

14 Q Okay.

15 A I believe it was, yes.

16 Q Okay. And what happened then?

17 A That is -- okay. Then the Lincoln was going on
18 -- yes, the Lincoln was going on down. The Mazda was
19 backed up to it.

20 Q How did the Mazda get backed up to it? Did it
21 back up down the road?

22 A You know, I can't be exactly sure who was leading
23 who. But I believe the Lincoln was in front when we left
24 the track highway. But we did -- we pulled over and let
25 it in front of us.

1 Q That is what I'm asking. How did you turn the
2 Mazda around?

3 A I can't really remember. I guess we just turned
4 it right there when we went down the road.

5 Q Okay. But the Mazda is the one that turned
6 around and backed up to the Lincoln?

7 A Yes.

8 Q And they were trunk-to-trunk?

9 A Yes.

10 Q How far apart were they?

11 A I don't know. A few yards. Not a great distance,
12 or anything.

13 Q Okay. What did you do then?

14 A Then we started going through everything, getting,
15 you know, all their stuff out and going through the inside
16 of their car.

17 Q What did you do with the people?

18 A They were standing like in the lights of the
19 Lincoln, I believe.

20 Q Of the Lincoln?

21 A Yes.

22 Q Okay.

23 A And Donnie was watching them at that time. They
24 weren't standing right in front of the lights. They were
25 standing off to the side of the car, but the lights -- the

1 beam of the lights was still on them.

2 Q Do you remember an interview several days ago
3 that you had with Mr. Irwin, your attorney, Mike Beers,
4 and Tom Brawley?

5 A Yes.

6 Q Now I want to get this clear because you just
7 said two different things --

8 A Okay.

9 Q -- in that statement. Okay? You said -- I'm
10 sorry, I lost it. Just a minute.

11 Okay. "And then we went on down to another dirt
12 road that we approached, just happened to be on this, and
13 we had just been on it a couple minutes at the most. Then
14 we pulled down this road just a little ways and we backed
15 up the cars together, and the Lyons family were escorted
16 out of the Lincoln and more or less put off to the side
17 of the Mazda lights so that the lights of the Mazda were
18 on them, and kind of off to the side, and then at that
19 time Donnie was covering them."

20 Let me tell you that Lieutenant Brawley's notes that
21 he wrote up indicate that you said at that time that:

22 "He further stated that during the time they were
23 switching the items from the two vehicles that the Lyons
24 family and Teresa Tyson were standing in front of the
25 Mazda in the headlights."

1 Do you --

2 A Well, I do remember the statement, but I believe
3 it was the Lincoln that they were standing in front of.

4 Q You think it was the Lincoln now?

5 A Yes. I'm pretty sure, yes.

6 Q Then what happened?

7 A Well, we started switching everything around at
8 that time. I was taking -- going through the stuff in
9 front of the Mazda -- the seats and stuff, and the purses
10 and wallets, and so forth. I was going through their
11 articles there. And then just before I got through with
12 all of it, you know, just -- I just wanted to get it done.
13 So I put everything in a big purse, everything there, and
14 then I --

15 Q Where did you put that purse? In the back of the
16 Lincoln?

17 A No. We kept that purse because we wanted to go
18 through it, you know, and see what was all there.

19 Q Okay.

20 A And then I went back and started helping Ray go
21 through the trunks of everything. You know, pulling
22 everything out of the Mazda and putting everything in the
23 Lincoln, and everything from the Lincoln into the Mazda.

24 Q Okay.

25 A Okay. At that time dad went out -- you know, he

1 was out in the desert, you know. I guess, you know, he
 2 came back and told us to take the Lincoln -- told one of
 3 us to get in the Lincoln and drive it back over there.

4 Q Do you remember who drove it?

5 A Donnie did.

6 Q Donnie did?

7 A Yes.

8 Q Okay.

9 A And that is -- he, you know -- it was turned
 10 around so it was facing the road. And at that time dad
 11 came up and started shooting, you know, to stop the engine
 12 so it wouldn't run anymore.

13 Q Was the engine running?

14 A Yes.

15 Q Donnie left it on?

16 A Yes. Dad told him to.

17 Q Your dad told Donnie to leave the engine on?

18 A Yes. He wanted to make sure it wasn't going to
 19 run.

20 Q Okay. Then what happened?

21 A Okay. At this time is when the family were
 22 escorted over to the Lincoln and --

23 Q Who did that?

24 A All of us were -- you know, we were just around
 25 them, you know, and escorted them over to the Lincoln.

1 And they were, you know, standing up at the front of the
 2 Lincoln there at first, and that is --

3 Q Were the lights still on in the Lincoln?

4 A Yes.

5 Q Your dad hadn't shot them out?

6 A No. He shot into the radiator of the Lincoln.

7 Q Okay.

8 A And that is -- well, that is when dad -- you know,
 9 we were around them, and Mr. Lyons at that time, I can
 10 remember him saying, you know, something like just, you
 11 know, "Don't kill us," or something, and dad saying that,
 12 you know, "I'm really thinking about it," you know,
 13 something to that --

14 Q Who was standing there when that was said?

15 A We were all standing around them.

16 Q Were all of you close enough to hear it?

17 A Yes.

18 Q Okay. Go ahead.

19 A And then at this time we -- dad, you know, wanted
 20 -- he told us to go get some water in a jug for them.

21 Q He told who to do this?

22 A He just said to do it. He wasn't telling anybody
 23 in particular to do it. Bonnie went back and, you know,
 24 he was having problems finding -- getting the five-gallon
 25 can that we had out of the Marda. And at this time is

1 when, you know, me and Ray went back and started helping.
 2 Q Did your dad tell you to go back?
 3 A Well, he yelled back again, you know, wondering
 4 where the water was.
 5 Q Yes.
 6 A You know. But then when me and Ray went back,
 7 we got the water, and me and Ray came back with it and we
 8 were going to go over to the Lincoln and give it to them.
 9 This is when dad said, "Let him get a drink of water."
 10 Q Where was your dad then?
 11 A He was off to the side of the Lincoln.
 12 Q How far away?
 13 A I couldn't give you -- you know, it was just a
 14 little distance. I couldn't give you an exact distance.
 15 Q Pretty close?
 16 A Not real close, no.
 17 Q Too far for a shotgun to shoot?
 18 A No, it's not too far for it to shoot. But he
 19 wasn't standing in the position that he was when, you
 20 know, the shots were fired. He was a few yards away from
 21 the Lincoln at this time.
 22 Q He was a few yards away from the Lincoln?
 23 A Yes. You know, I couldn't give you anything
 24 exact on that at all.
 25 Q Can you judge from something in this room?

1 A Well, about the distance across this room, and
 2 maybe a little less, or something.
 3 Q Okay. You are indicating a distance of what?
 4 Maybe thirty foot?
 5 A Yes, probably.
 6 Q Okay. Then where was he standing in relation to
 7 the Lincoln? Was he standing on the passenger side or --
 8 A He was standing on the passenger side, yes.
 9 Q Was he standing in front of the Lincoln or
 10 behind the Lincoln?
 11 A More or less to the side of the Lincoln.
 12 Q Straight to the side of it?
 13 A Yes, I believe so.
 14 Q What kind of country was this?
 15 A Desert.
 16 Q Were there any trees?
 17 A Bushes. You know, just regular desert bushes,
 18 and so forth.
 19 Q I think you said in here somewhere he told you
 20 to back it off into some trees. I take it you didn't
 21 mean "trees"?
 22 A I have no idea what the statement was made for
 23 or anything. I couldn't say.
 24 Q Do you remember any distinguishing landmarks, or
 25 anything like this?

1 A (No answer.)
 2 Q Any cactus or --
 3 A No.
 4 Q What kind of night was it? Was it dark?
 5 A It was --
 6 Q Was it moonlit?
 7 A It was dark.
 8 Q How well could you see?
 9 A It was dark, is about all I could say. You could
 10 make out people. You couldn't see them as clearly as I
 11 can see you now.
 12 Q How far away could you recognize people?
 13 A Oh, I suppose a little distance. I couldn't say
 14 for sure, you know.
 15 Q Could you recognize people say from a distance
 16 from that wall of this room to where I'm sitting?
 17 A You could probably make out the form pretty well,
 18 yes.
 19 Q You could make out the form. Could you make out
 20 the face or their identity?
 21 A If you knew who you were looking for, yes, you
 22 probably could.
 23 Q Okay. You brought back the water and your dad
 24 said, "Give him a drink," right?
 25 A Yes.

1 Q And who handed him the jug?
 2 A I believe Ray was carrying it at this time.
 3 Q Ray handed it?
 4 A Yes, I believe so.
 5 Q Okay. Then what happened?
 6 A That is -- it was right after about that, dad
 7 kept the jug, and that is when him and Randy went behind
 8 the Lincoln.
 9 Q They went behind the Lincoln?
 10 A Yes.
 11 Q How far behind the Lincoln?
 12 A Right -- you know, right behind it right there.
 13 You know, kind of the trunk.
 14 Q Were they both on the same side? Or were they
 15 directly behind it?
 16 A No. Randy was on the left. They just, you know,
 17 walked over and sat behind the Lincoln.
 18 Q Okay. Then what happened?
 19 A Well, after that, they -- you know, that is when
 20 they came back up and, you know, picked up the shotguns,
 21 and so forth, and started shooting into the Lincoln.
 22 Q How far away were you?
 23 A I couldn't really tell you how far I was, you
 24 know. It was about maybe just a little more than this
 25 distance here.

1 A A little more than the length of this room?
2 A Yes.
3 MR. BROWN: What do you call this room?
4 A GUARD: What do we call it?
5 MR. BROWN: Yes.
6 A GUARD: It's just a briefing room.
7 MR. BROWN: Briefing room in the Diagnostic Center
8 at the Arizona State Prison?
9 A GUARD: Yes.
10 MR. BROWN: Is this the only briefing room in here?
11 A GUARD: Yes.
12 MR. BROWN: Okay.
13 THE COURT REPORTER: Do you want the prison guard
14 identified?
15 MR. BROWN: He is a sergeant from the Arizona State
16 Prison sitting here, that has been sitting with us, and
17 I was trying to find out what room we are in for identi-
18 fication purposes.
19 Q (MR. BROWN) Okay. You saw the -- you saw both
20 guns come up?
21 A Yes.
22 Q When you say you saw them come up, what do you
23 mean?
24 A Well, when I seen them coming from down at the
25 side, up.

1 Q Okay. Which way were they shooting?
2 A In toward the Lincoln.
3 Q From the front, or the back, or the side?
4 A The sides.
5 Q Or where?
6 A From the sides.
7 Q Okay. Did you watch them all the time they were
8 firing?
9 A I didn't watch them all the time. You know, I
10 seen them firing, yes.
11 Q Did you see both people fire?
12 A Yes. I seen flashes from both guns.
13 Q How many times did you see them fire?
14 A Several. I couldn't tell you how many times.
15 Q More than two?
16 A Yes.
17 Q From both?
18 A Oh, yes.
19 Q Okay. Did they stay on the same side as they
20 started?
21 A No. After -- you know, after there was quite a
22 lot of shooting, that is when Randy came back to the
23 Honda. And then dad stayed there, you know, still
24 shooting a couple of rounds, until he was off on the left
25 side at that time when I looked over.

1 Q The left side? Is that the passenger side?

2 A No. That is the driver's side.

3 Q The driver's side? Your dad was standing over

4 on that side shooting in?

5 A Yes.

6 Q How far away from the Lincoln was he?

7 A Well, right next to it. The way it looked from

8 where I was, you know, I could still see the flash from

9 the gun on the outside of the car.

10 Q Do you think that both of them fired over five

11 times?

12 A I would think so. I couldn't -- I couldn't, you

13 know, say for sure. You know, there were several shots

14 fired.

15 Q Now you say you saw some flashes coming from both

16 sides of the car at the same time, is that right?

17 A Yes.

18 Q Did you see more than one flash come from each

19 side of the car?

20 A Yes. You know, when I looked there at first, yes.

21 Q There at first?

22 A (Witness nodding head.)

23 Q Okay. Then I take it you turned around and you

24 didn't look for a little bit?

25 A That is when me and Ray went back to the Honda at

1 this time, and we didn't really watch it.

2 Q How far was the Honda from the --

3 A I couldn't really say. You know, it was still on

4 the road. I couldn't give you any distance on it, or

5 anything.

6 Q Can you relate it like to a football field? Was

7 it as far away as the length of a football field? Or half

8 of it? Or --

9 A I don't know. Maybe twenty-five, thirty yards

10 away, something as such. I couldn't say for sure.

11 Q Did the shooting stop and then start up again?

12 A Yes. You know, it didn't stay like real constant,

13 you know. Like when Randy came back there, it stopped

14 there for a little bit, and then there was more.

15 Q Okay. Until Randy came back, was there any

16 break in the shooting?

17 A Like I said, there wasn't, you know, super -- it

18 wasn't always constant, you know. But, you know, it

19 pretty well kept up.

20 Q Okay. And then -- but on more than one occasion

21 you saw the flashes coming from both sides of the car?

22 A Yes.

23 Q So, when I say "on more than one occasion," I'm

24 talking about you looked, you looked away, and then you

25 looked back, and there were still flashes coming from both

1 sides of the car?

2 A As far as looking back then, I was just more or

3 less listening to it then, you know. I can't remember for

4 sure if I looked back again and seen any firing then or

5 not. I did look back to see my dad still firing on the

6 left side, but this was after Randy was back at the Masda.

7 Q What did Randy say when he came back?

8 A I can't remember if he said anything or not.

9 Q Okay. What happened then?

10 A Well, when dad came back, that is when we got in

11 the car and we went -- you know, went back down the same

12 road that we came on and got back on the truck route, went

13 back down, you know, going the same direction we were

14 heading.

15 Q Where did you go from there?

16 A We went up to a -- up towards Flagstaff.

17 Q Do you remember crossing the freeway a little

18 bit after?

19 A Yes. I believe we were on the freeway for a

20 short period of time, or something. I couldn't say for

21 sure about that.

22 Q Okay. But the cars were backed together trunk-

23 to-trunk, right?

24 A Yes.

25 Q And the Masda was the one that turned around?

1 A I believe so, yes.

2 Q And you were riding in the Masda?

3 A Yes.

4 Q Had you gotten out before it turned around?

5 A I don't remember.

6 Q Did you ever talk to anybody about it after it

7 happened?

8 A You mean after we left there?

9 Q Yes.

10 A There wasn't anything really said about it, no.

11 At that particular time, there wasn't anything said about

12 it at all.

13 Q Did you ever talk to anybody about it later on

14 while you were out --

15 A No. We -- you know, just the fact maybe, you

16 know, listening to see on the radio, and so forth, to see

17 if they were found or anything.

18 Q Did you ever talk to your dad about what had

19 happened?

20 A I never talked to him. He mentioned something

21 to me at one time about it.

22 Q What was that?

23 A Just that, you know, Randy did -- you know Randy

24 wanted to kill them. You know, that was the reason they

25 went back behind the Lincoln. He said they were talking

1 then, and dad was saying that Randy, you know, wanted to
2 kill them, you know. He just -- you know, that was the
3 only thing that was really said about it.

4 Q I see. When did you have this conversation with
5 your dad?

6 A I believe it was at that campsite that he told
7 me about it.

8 Q Was anybody else there when you had that talk?

9 A No. I believe it was just me and him there.

10 Q Do you remember anything about the road you were
11 on, that road coming off the highway? Was it gravel?
12 Dirt?

13 A The one when we took the people down?

14 Q Yes.

15 A I believe it was dirt.

16 Q Okay. Now there is two roads we are talking
17 about. One comes off of the highway, and then you turned
18 on to another one. Were they both dirt?

19 A Okay. The one that turns off the highway was
20 dirt. And then the one we turned off after that?

21 Q Yes.

22 A They were both dirt.

23 Q They were both dirt?

24 A Yes.

25 Q Was one of them gravel?

1 A I couldn't say for sure if it was or wasn't.

2 Q Okay. Was there any other weapon fired out
3 there except those two shotguns?

4 A No. They were the only two shot.

5 Q And where did you get the ammunition that you
6 used?

7 A Oh, we bought it here and there. It's not really
8 hard to buy ammunition.

9 Q Sort of a mixed lot?

10 A Yes.

11 Q When was the first time you ever discussed
12 testifying against Randy with anybody?

13 A It was after court that -- after we were
14 sentenced that day, is when our lawyers told us about it.

15 Q Did you ever discuss it before then?

16 A Discuss it? No. We didn't really like the idea
17 of doing it.

18 Q Did you ever discuss it with your Uncle Joe?

19 A No. We don't discuss much of anything with him.

20 Q Did you ever talk to your Uncle Joe after you got
21 put in jail?

22 A Just the time when they found my dad. He came
23 to the jail to tell us about it.

24 Q Did he talk to you then about testifying against
25 Randy?

1 A I don't remember if he did or not.

2 Q Did you ever talk to a fellow by the name of

3 Mark Mills?

4 A Mark Mills? Yes.

5 Q What did you tell Mark?

6 A We just talked about the jail conditions, and so

7 forth.

8 Q Did you ever tell Mark that there were other

9 things that you had done and the authorities didn't know

10 anything about it?

11 A I don't recall ever saying anything like that to

12 him.

13 Q Did you ever tell him that your dad was trying to

14 have intercourse with the girl, but couldn't get his penis

15 hard?

16 A No, I never told him that.

17 Q Did you tell him that you killed a family down in

18 Yuma?

19 A No, I don't believe there was ever anything said

20 about that.

21 Q I'll tell you that I have a report here that was

22 prepared by Tom Solis of the Pinal County Sheriff's

23 Department in which Mark Allen Mills said that you said

24 those things while you were in jail, and that is why I

25 asked you about it.

1 A Well, see, a lot of things were said back and

2 forth. I mean people were telling me Ray was saying this

3 and that. People were telling Ray I was saying this and

4 that, too. And, you know, we found out from each other.

5 It's just a bunch of crap. You know, everybody just wants

6 to get into it.

7 Q Okay. Now the day that you were captured out at

8 the roadblock, you made a statement to Lieutenant Brawley,

9 didn't you?

10 A Lieutenant Brawley? Not at the roadblock. This

11 was at the jail.

12 Q At the jail?

13 A Yes.

14 Q You made a statement that day?

15 A Yes.

16 Q What did you tell Lieutenant Brawley?

17 A I couldn't tell you.

18 Q Did you tell him essentially what you told me?

19 A Pretty much so, I would think, yes.

20 Q Did you also tell that to a Sergeant Salyer out at

21 the scene?

22 A Is he that big tall guy?

23 Q Yes, great big man.

24 A Yes.

25 Q Did you ever camp by a river?

1 A Yes, I believe so.

2 Q Did you camp in two separate places?

3 A We camped in several different places.

4 Q No, I'm talking about -- well, let me ask you

5 this:

6 According to Ricky, this is what Salyer says you told

7 him out there. Okay?

8 "According to Ricky, the first day was spent driving

9 the back roads to put some distance between them and the

10 Florence area and to buy them some time. When darkness

11 came, they made camp at an unknown location. The first or

12 second day they had a flat tire on the Lincoln, which they

13 changed with a spare tire. The second day was also spent

14 driving back roads, and that night they camped by a river.

15 It was at this camp that they buried the portable radios

16 that was taken from ASP."

17 Did you tell him that?

18 A Well, I couldn't say I told him that word-for-

19 word, but it's a good chance I did.

20 Q Okay. Were you lying to him then?

21 A I wasn't telling him the whole truth.

22 Q Okay. Then you talked to Lieutenant Brawley

23 that afternoon, didn't you?

24 A Yes, sir.

25 Q When you talked to Lieutenant Brawley -- okay?

1 His notes say:

2 "We asked him who shot the people, and he said, 'I

3 don't want to talk about it.' We then said, 'You might as

4 well go ahead and tell us because there are only two

5 people left, your dad and Greenawalt.' And he said,

6 'That's right.'"

7 Then he puts in, quote, "We got in the Mazda and

8 left. It was real quiet. Nobody talked about the

9 shooting."

10 And he ends the quote and he says, "We asked him why

11 did he think the people were shot. And he replied that his

12 dad felt it was a necessity because the cops had gotten on

13 to them too quickly and they didn't want any witnesses."

14 Did you tell Lieutenant Brawley that?

15 A I couldn't say for sure if I told him that or not.

16 Q Is that the truth?

17 A I did make a statement to him.

18 Q Is that the truth?

19 A About being a necessity?

20 Q That your dad felt it was a necessity to shoot

21 them?

22 A It seems like the only conclusion I could really

23 come up with.

24 MR. BROWN: That is it.

25 Let's go back on the record. At this time I'm

1 adjourning and not terminating the interview, pursuant to
 2 what we discussed previously about his contacting Mike
 3 before I ask him any more questions about the conspiracy
 4 end of it.

5 And let me ask you one more question, okay?

6 THE WITNESS: Okay.

7 Q (MR. BROWN) You decided you were going to take
 8 that car, right?

9 A Yes.

10 Q And you had taken the car and had everything you
 11 wanted over into the Mazda, is that right?

12 A Yes.

13 Q And the shootings occurred after you were com-
 14 pletely done with that?

15 A Yes.

16 MR. BROWN: Okay.

17
 18 - - - - -
 19
 20
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 22
 23
 24
 25

1 I HEREBY CERTIFY that I made a stenotype record of
 2 the proceedings had in the foregoing matter; that the said
 3 stenotype record is full, true and accurate; and that the
 4 foregoing 52 pages constitute a full, true and accurate
 5 transcript of the same to the best of my skill and
 6 ability.

7 DATED this _____ day of February, 1979.

8
 9
 10 Janet Emmert
 11 Official Court Reporter
 12
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1	IN THE SUPERIOR COURT OF THE STATE OF ARIZONA	
2	IN AND FOR THE COUNTY OF YUMA	
3		
4	THE STATE OF ARIZONA,)
5	Plaintiff,)
6	vs.) No. 9299
7	RAYMOND CURTIS TISON)
8	and RICKY WAYNE TISON,)
9	Defendants.)
10		
11		
12	Arizona State Prison	
13	Florence, Arizona	
14	February 1, 1979	
15		
16		
17		
18	<u>STATEMENT OF RAYMOND TISON</u>	
19		
20		
21		
22		
23		
24		
25	(COPY)	EXHIBIT 2

JANET EMERT
Official Court Reporter-NPR
Florence, Arizona

1	THE STATEMENT OF RAYMOND TISON was taken on	
2	February 1, 1979, at 3:00 o'clock p.m. at the offices of	
3	the Diagnostic Center, Arizona State Prison, Florence,	
4	Arizona, before Janet Emert, Official Court Reporter,	
5	Pinal County Superior Court, Division II, Florence,	
6	Arizona.	
7		
8		
9		
10	<u>APPEARANCES:</u>	
11		
12	FOR THE PLAINTIFF:	MR. MICHAEL IRWIN
13		County Attorney
14		P. O. Box 1048
15		Yuma, Arizona 85364
16	FOR THE DEFENDANT:	MR. ROBERT C. BROWN
17		Attorney at Law
18	FOR RAYMOND TISON:	Mr. Harry Bagnall
19		Attorney at Law
20		
21		
22		
23		
24		
25		

Arizona State Prison
Florence, Arizona
February 1, 1979

RAYMOND TISON,
was examined and testified as follows:

EXAMINATION

BY MR. BROWN:

Q Okay. Raymond, it's my understanding that you have entered into a plea agreement with the State of Arizona, and that one of the conditions of that plea agreement is that you will testify in Randy Greenswalt's trial, is that correct?

A Yes.

Q Okay. The reason we are here today is for me to interview you, because I've never interviewed you before because you have been a co-defendant.

Let me tell you before we start that, of course, Harry is here to watch out for your rights. But if at any time you don't understand a question that I ask or you don't think the question is fair in any respect, why speak up and let's get it cleared up then. If you don't say something, I'll assume that you understand the question. Okay?

A All right.

Q Directing your attention to sometime before July, 31st, can you tell me when was the first time that you became involved in any way with the plan to break your father out of prison or to release your father from prison?

A Became involved with it?

Q In any way. Discussed?

A Other than knowing that he wanted out or the escape that we did --

Q Okay.

A See, that escape that we did, that wasn't -- that was like planned the day before.

Q Okay.

A We had set it up the week before.

Q That is what I am trying to figure out, okay? This particular escape.

A Yes.

Q Okay. When did you first start talking about it, or working on it, or what?

A Well, we talked about it with dad on that Saturday, before that Sunday, that one there, and then me and Ricky had thought about it earlier in the week. Then dad thought about it that same week and we discussed it Saturday.

Q When you say Saturday, is that the day before?

1 A Yes.

2 Q The very day before, not --

3 A Yes.

4 Q Not the week before?

5 A Yes. That day.

6 Q Okay. How were you able to arrange all this

7 within one day?

8 A What do you mean?

9 Q Hadn't there been some planning before this and

10 some assembling of guns?

11 A Not for this. There had been other -- you know,

12 dad had been wanting to get out for over a year.

13 Q Yes.

14 A And he was planning other ways. But like this

15 here -- you know, that is when we started collecting the

16 stuff. But this here, you know, we had all the stuff

17 already.

18 Q Okay.

19 A We didn't think about that, you know, till the

20 week before, and we discussed it with him the day before.

21 Q Was this a separate and distinct plan from any

22 that had ever been discussed before?

23 A Well, what really made it separate was that me

24 and Ricky and Donnie was getting involved in it. Before

25 that, he didn't want to involve us in nothing. He and

1 Ricky had thought about getting involved before, you know.

2 You know, we had told dad about it, but he didn't want us

3 involved before.

4 Q Okay. Now how did you first learn that Randy

5 Greenawalt was to be involved in the escape?

6 A Well, dad said if he escaped he would be taking

7 him with him, and he pointed him out once or twice while

8 we were in the visiting room there.

9 Q How long was this before the escape?

10 A I'm not really sure at this time just how long

11 before he pointed him out to us, you know.

12 Q Was it over a month?

13 A Probably.

14 Q Okay. Do you know what Randy Greenawalt was

15 supposed to do to assist in the escape?

16 A This escape here?

17 Q Yes.

18 A Yes.

19 Q What was he supposed to do?

20 A It was discussed Saturday. He was supposed to

21 be up there in that yard office.

22 Q And who was in on this discussion?

23 A Ricky, Donnie and dad.

24 Q Where did the Lincoln come from?

25 A Joe.

1 Q The guns also came from Joe?

2 A Yes.

3 Q Okay. And was Joe a part of the general con-
4 spiracy to break your dad out?

5 A I would say he was in on the conspiracy. He
6 wasn't in on the planning.

7 Q Let me ask you this:

8 To the extent that he was told that certain weapons
9 were needed?

10 A Well, see, dad had talked to him. It was him and
11 dad. He came down and saw dad. I don't know what their
12 arrangement was, but, you know, I think dad would have
13 told him what the stuff was for.

14 Q Let me ask you this:

15 You don't know what agreements your dad had with
16 Joe?

17 A Not offhand, no.

18 Q Have you ever said that you know?

19 A No.

20 Q Have you ever made a guess to anybody in a state-
21 ment?

22 A About what their plans were?

23 Q Yes.

24 A No.

25 Q Going back, you say your dad had been planning

1 the escape for about a year, is that right?

2 A Yes.

3 Q And Joe was assisting him in these plans, is that
4 correct?

5 A I wouldn't say, you know, going really and
6 assisting. He was supplying stuff.

7 Q Okay.

8 A You know, Joe, he is into these drugs and all
9 this, you know. I figured that had something to do with
10 the deal.

11 Q Let me ask you this:

12 Joe supplied the car, is that right?

13 A Yes.

14 Q He knew what it was going to be used for, is
15 that right?

16 A I would think so.

17 Q Okay. He supplied some shotguns?

18 A Yes.

19 Q Did he supply any other guns?

20 A One handgun, I believe.

21 Q Okay. And he gave those directly to you, didn't
22 he?

23 A Yes.

24 Q And at that time did he know what they were going
25 to be used for?

1 A Probably. You know, I can't say for sure because
2 that was him and dad setting that up.
3 Q Okay. Did you have any discussion with him when
4 you got the guns and say, "We are going to break dad out"?
5 A I -- I don't like Joe.
6 Q Yes.
7 A You know, I don't go out and meet the man or
8 nothing. I avoid him if I can avoid him.
9 Q Okay.
10 A But dad just asked us to go pick these up for
11 him.
12 Q Okay. Now you came to the prison and the escape
13 was made from here, is that right?
14 A Yes.
15 Q Okay. And that was on the morning of the 31st, on
16 Sunday morning?
17 A Yes.
18 Q Okay. Where did you go from the prison?
19 A To the hospital.
20 Q You went to the hospital?
21 A (Witness nodding head.)
22 Q Had you parked the Lincoln at the hospital
23 earlier?
24 A Yes.
25 Q When you brought the Lincoln to Florence, who

1 brought the Lincoln to Florence?
2 A Me and Donnie.
3 Q And when did you bring it to Florence?
4 A That morning.
5 Q What time?
6 A Well, by the time we got down there, it was just
7 a few minutes before eight I think when we finally did get
8 down here.
9 Q Okay. And where did you drive in the Lincoln
10 in Florence?
11 A To the hospital.
12 Q How did you get to the hospital? Where did you
13 come from? Casa Grande?
14 A Phoenix.
15 Q Phoenix? How did you drive to the hospital?
16 A We come in on I-10 through the mountains here.
17 You know, come up -- I can't remember if we went through
18 the town or came up the back way, though, to the hospital.
19 Q Let me ask you this:
20 When you say you went through the mountains, do you
21 know this intersection right out here with the highway
22 and where the prison comes out?
23 A The one right here coming in in Florence?
24 Q Yes.
25 A Yes.

1 Q Right. Did you go past there?
 2 A I can't remember if we did or not. There is two
 3 ways to get to the hospital, though.
 4 Q Well, actually --
 5 A The road runs by there.
 6 Q Let me draw a little diagram. Okay? Can you
 7 walk over here?
 8 If you are coming -- here is the overpass over to
 9 Coolidge. Okay?
 10 A Yes.
 11 Q Okay. And you come down here and you take a turn
 12 that brings you into Florence, and it brings you down sort
 13 of the main drag here. There is an intersection here.
 14 A Yes.
 15 Q There is another way where you curve over here
 16 and you come back down around and you get on this highway
 17 that comes by the prison, right?
 18 A Right.
 19 Q There is another way that comes off of here -- I
 20 forget what that road is -- and it comes in like this, is
 21 that correct?
 22 A Yes. It runs by the hospital.
 23 Q And the hospital sets out here. Okay. You can't
 24 remember whether you came in on -- we will call this --
 25 MR. BAGNALL: That is the Adamsville Road.

1 MR. BROWN: Adamsville. I kept thinking Attaway.
 2 Q (MR. BROWN) Okay. The Adamsville Road, you
 3 don't remember whether you came in on Adamsville or what
 4 other street. Can you eliminate anyone of the three, is
 5 what I am asking?
 6 A Yes. This would be eliminated.
 7 Q Okay.
 8 A It would be either this way or this way.
 9 Q Now by "this way," you are talking about where
 10 you take the turn here and come straight into Florence?
 11 A Yes.
 12 Q So you would come down the main street, right?
 13 A I can't say we came down it, but it would either
 14 be this way or this way.
 15 Q That is what I mean. I am just trying to identi-
 16 fy the second road. Okay?
 17 A Yes.
 18 Q But you definitely didn't go on around and down
 19 past the prison, is that right?
 20 A No, because that runs by the canal there and --
 21 Q Right. Okay. We will refer to this as Exhibit
 22 A. Go ahead and sit down. I am sorry.
 23 A Okay.
 24 Q To the best of your knowledge, did anyone else
 25 drive that Lincoln that morning?

1 A No. If they did, I don't know about it.
 2 Q And you had the green LTD?
 3 A I? No.
 4 Q Who had it?
 5 A We had it -- Ricky had that.
 6 Q And that is what the three of you rode over to
 7 the prison in, isn't that right?
 8 A No.
 9 Q What did you ride over here in?
 10 A The way it was, we met Ricky at the hospital.
 11 Ricky took me over to the prison.
 12 Q Okay. In what?
 13 A The Galaxie.
 14 Q In the Galaxie?
 15 A Yes.
 16 Q Okay.
 17 A And he went and got Donnie, and then he come back
 18 later. You know, like I think it was a half hour later.
 19 Q Okay. But all the times that you came over to
 20 the prison, you used the Galaxie, is that right?
 21 A Yes.
 22 Q Now we are pretty familiar with the events that
 23 occurred over here at the --
 24 A Yes.
 25 Q -- North Annex. You left the North Annex, and

1 what did you do? How did you go?
 2 A Well, we went and switched cars.
 3 Q Okay. How did you get there to switch cars?
 4 A I think we went right through downtown Florence.
 5 Q Okay.
 6 A And then we went there to switch cars and we
 7 shot down that road.
 8 Q Adamsville?
 9 A Yes, Adamsville.
 10 Q Okay. Did you ever bring the Lincoln back into
 11 town?
 12 A (No answer.)
 13 Q Over here by the prison?
 14 A No.
 15 Q Okay. Go ahead.
 16 A Then we just shot out there and got on that
 17 highway there that leads to the overpass to go into
 18 Coolidge, shot out there until you come up to the Attaway
 19 Road exit there, and turned right down that.
 20 Q Attaway?
 21 A Yes. That is by the Elks Club and the golf
 22 course there.
 23 Q Yes.
 24 A Just this side of it.
 25 Q Okay.

1 A Where it turns into --
 2 Q Which way did you turn there? North or south?
 3 A Right.
 4 Q Right? That would be north, right?
 5 A North.
 6 Q Towards Phoenix?
 7 A Yes.
 8 Q Okay. Where did you go from there?
 9 A Well, Attaway Road ends in Huntsville -- or Hunt
 10 Highway.
 11 Q Yes.
 12 A And we hung a left there. It would be west, I
 13 guess, and it's a dirt road down there and it, you know,
 14 curves, and all this. And we went on a few more roads,
 15 but I don't know the names of them. I know we came out
 16 and got on the freeway at Williams Field Road.
 17 Q Did you ever go to Avondale?
 18 A I don't even know where Avondale is.
 19 Q Let me ask you this:
 20 Did you stop at a shopping center and truck stop?
 21 A No. We never went through no towns.
 22 Q Never at all?
 23 A No. We went by -- I think we went by a little
 24 community -- little houses and all this -- at one time,
 25 but we never stopped.

1 Q You didn't stop?
 2 A No, except at stop signs and what not.
 3 Q Okay. Go ahead.
 4 A And then we got on the freeway and I think we
 5 went up to -- up the freeway up to Baseline Road. And I'm
 6 not real sure, but, you know, I'm pretty sure it was
 7 Baseline Road, went out on Baseline Road, went quite a
 8 ways on Baseline Road, and I'm not sure but I think we
 9 either passed the freeway or were on the freeway just for,
 10 you know, a minute or two at one time.
 11 And then we went out to a -- you know, taking back
 12 roads and all this, and staying out of most of the major
 13 highways and everything, and went out to the old abandoned
 14 house like.
 15 Q Now from this abandoned house, what could you see?
 16 A Mountains.
 17 Q Let me ask you this:
 18 Do you know what a radar installation looks like?
 19 A Microwave installation?
 20 Q Yes, kind of like.
 21 A Yes, I've seen them.
 22 Q Was there any visible, from where you were
 23 sitting, on top of the mountain?
 24 A I didn't see any.
 25 Q Okay. What could you see?

1 A Just the mountains and a lot of desert, and there
2 were some houses, you know, a ways off. You could see
3 those, the outlines and all.

4 Q Do you know how far you were from Interstate 8?
5 A No, I can't say how far we would be. I don't
6 think we were that far away, though, you know.

7 Q Okay. How long did you stay there at that
8 abandoned house?

9 A I think it was about like two days.

10 Q Two days?

11 A Yes.

12 Q And how many --

13 A It was two nights.

14 Q You remember spending two nights there?

15 A I think it was two nights, and we left on the
16 third night.

17 Q You left on the third night?

18 A Yes.

19 Q Okay. When you left, which way did you go?

20 A I can't give you directions.

21 Q Let me ask you this:
22 When you left, did you drive parallel to the freeway
23 on an access road?

24 A I don't know. You see, it was at night and like
25 Randy and Donnie did all the driving and dad was

1 navigating. And, you know, like really me and Ricky, it
2 seems like we were just along for the ride, and we were
3 traveling at night and sleeping a lot in the car and all.

4 Q Do you remember any road signs, or anything like
5 that?

6 A No. It was all back roads. I remember dirt
7 roads, you know, and sometimes getting on paved roads, and
8 I remember a curvy road somewhere. But right in there is
9 when I fell asleep.

10 Q Did your dad have a map?

11 A Yes.

12 Q What kind of map was it?

13 A Arizona service station maps.

14 Q It was a regular service station map?

15 A Yes.

16 Q It wasn't a topographical map?

17 A We had some, but they were the Florence area.

18 Q Okay. Now how long did you travel before you had
19 the blowout?

20 A I can't really say. You see, I fell asleep in
21 there. We had one flat tire while we were at that
22 abandoned house and had changed it, and I woke up just a
23 few minutes before we had that blowout.

24 Q Let me ask you this:
25 I think somewhere in your statement, did you say -- or

1 maybe it was Ricky said -- did you and Ricky purchase
 2 supplies at a store while you were down there?
 3 A Down at that house?
 4 Q Yes.
 5 A Yes. I think it was a little county store like.
 6 We got gas there, too.
 7 Q Okay. Can you describe that store for me?
 8 Do you remember what color it was?
 9 A It was set off the highway a bit -- the road. I
 10 wouldn't call it a highway. It was set off a ways. I
 11 think it was white.
 12 Q White?
 13 A Kind of a big building, like a little garage set
 14 off towards the side.
 15 Q Was it a long, low building? Or was it a pretty
 16 square building or --
 17 A It was a square building. I can't remember if it
 18 was long or not, though.
 19 Q Do you remember the name of it?
 20 A No.
 21 Q You purchased some stuff there, though, is that
 22 right?
 23 A Food.
 24 Q Did you purchase it from a man or a woman?
 25 A I think it was a woman.

1 Q Can you describe her for me?
 2 A (No answer.)
 3 Q What color hair did she have?
 4 A I think she was a -- I think she was an Indian
 5 lady, dark hair, dark complexion.
 6 Q Dark hair, dark complexion?
 7 A Yes.
 8 Q Okay. Do you remember what kind of gas it was?
 9 Did you see the brand name on the pumps, or anything?
 10 A Brand name? No.
 11 Q Did it have a name on it like Texaco or Shell?
 12 A On the gas pump? I don't know. I didn't fill up
 13 the car.
 14 Q You didn't notice any signs?
 15 A The pumps were set off to the side.
 16 Q You didn't notice any signs as you drove up that
 17 said some kind of gas?
 18 A No. I think it was like my grandpa's station,
 19 the way he runs it, you know, just buy gas where you can
 20 get it at.
 21 Q Yes. Okay. Did you ever go into a bar down
 22 there?
 23 A A bar?
 24 Q In that area, yes.
 25 A You mean to go in and drink and sit down, and all

1 this, or --

2 Q Whether you went in to drink or sit down, or

3 whether you went in to get some beer and take it out, or

4 --

5 A I can't remember for sure, but I think I may have

6 just walked in one, thinking it was a store, and walked

7 back out.

8 Q Do you remember what the inside looked like?

9 A No. Just like a bar, I would say. You know,

10 dark, bottles sitting up, a bar, and all that.

11 Q Did it have a long bar?

12 A I don't know.

13 Q A few tables or --

14 A I don't know. I didn't walk in past the door.

15 Q I see.

16 A I just walked in and saw the bar and walked back

17 out.

18 Q Okay. Then did you drive somewhere else to do

19 your shopping?

20 A Yes. The store was just down the street from

21 there.

22 Q Okay. There was a bar and store there?

23 A Yes.

24 Q Was there anything else there?

25 A Houses.

1 Q Huh?

2 A Houses.

3 Q Do you remember the words "Whispering Sands"?

4 A Whispering Sands?

5 Q Yes.

6 A (Witness shaking head.)

7 Q Does that ring any bells with you?

8 A I've never heard the name, no.

9 Q Okay. There is a bar down in that area that is

10 kind of like you described. That is why I asked.

11 A No.

12 Q Okay. You don't know how you got on the road

13 that you had the blowout on, is that right?

14 A I was asleep. I just woke up a few minutes

15 before. See, we were taking back roads, and all of this,

16 and like they must have changed drivers at one time or

17 another because, when we started out, Donnie was driving.

18 But when I woke up, Randy was driving.

19 Q Okay. You had the blowout. How far did you

20 travel after the blowout?

21 A Not too far.

22 Q Now you described the dirt road that you went

23 down a little later, when you said it was one you passed

24 before.

25 A Yes.

1 Q Okay. Which side of that road did you have the
2 blowout on? Did you have the blowout before you got to
3 that road or after you got to that road?

4 A I think it was just before. That is the reason
5 I saw the road before.

6 Q Now as you were driving down that highway, did
7 this road we are talking about go off to your right or
8 off to the left?

9 A Right.

10 Q To your right?

11 A (Witness nodding head.)

12 Q Okay. So you had the blowout just before you
13 came to the road, and then you tried to drive a little
14 farther, is that right?

15 A Yes, I think so.

16 Q And then you finally stopped, is that right?

17 A (Witness nodding head.)

18 Q Then what did you do at that point?

19 A I think we got out and looked around, looking
20 at, you know, the tire and all this. My dad had a quick
21 temper, you see, and I think he got a bit hot at this time.
22 He just started cussing a bit, and all of this. And then
23 he come up with a plan -- you know, just take another car.
24 You know, flag somebody down coming. Just take another
25 car, you know.

1 Q Okay. He was the one that came up with this
2 plan?

3 A Yes, I think so.

4 Q Let me backtrack.

5 While you were there at that abandoned house, how
6 did your dad act?

7 A Like a free man. He was happy.

8 Q Did he get you pretty well organized and --

9 A What do you mean "organized"?

10 Q Well, let me ask you this:

11 While you were out and down at that house, who was
12 pretty well running things Was it your dad?

13 A Yes.

14 Q Okay. How did he go about doing that? Did he
15 assign everybody duties or --

16 A No. It was just a -- you know, his decision on
17 everything. We were letting him run the show because we
18 figured he knew more about this than any of us.

19 Q Why did you think that?

20 A Well, he knew more than me, Ricky or Donnie
21 because, you know, we never done anything like this. I
22 didn't know Randy, but the way Randy acted, you know, he
23 was ready to follow anything my dad said. You know,
24 follow orders.

25 Q Okay. Have you been in the service?

1 A No. Donnie was.

2 Q You have got some idea of what the service is
3 like, though, is that right?

4 A Yes.

5 Q Did he pretty well run things like a service
6 establishment? Or did he --

7 A Yes, I would say so, to a point, you know. He
8 wasn't like some drill sergeant, or nothing like this, no.

9 Q But it was sort of a semi-military setup? I
10 mean people --

11 A Yes.

12 Q -- had specific responsibilities and --

13 A Well, we never did really get around to assigning
14 out responsibilities. We were just all out -- you know,
15 I would say we all knew the odds we were playing with here.

16 Q Did he have somebody stand guard or --

17 A Yes, we were standing guard, taking shifts.

18 Q Did he go out and circulate around the area to
19 see if anything was around, or anything like this?

20 A Well, we could see, you know, a house down the
21 road there. We knew that was there. And I believe it
22 was occupied. I think there was another house towards the
23 back of that one. I think it was like, you know, a couple
24 of miles off. We could see the windmill up there. And
25 I think he did walk around once, him and Ricky.

1 Q Okay. Let's go back to the -- you are there at
2 the side of the road and your dad came up with this plan
3 for getting another car, is that right?

4 A (Witness nodding head.)

5 Q And what did you do then?

6 A Well, I got elected to flag down the car.

7 Q Okay. How did you get elected?

8 A Huh?

9 Q How did you get elected?

10 A I looked like the least -- you know, I --

11 Q Who elected you?

12 A I think it was my dad elected me for that.

13 Q Okay.

14 A Then they got off to the side of the road, and
15 all I was supposed to do out there was flag the car down,
16 because we figured they knew we were hot, and they see
17 five people, they will jump. So, you know, one person
18 out there, it wouldn't look that bad.

19 Q How many cars did you try to flag?

20 A I think there was one attempt before those
21 people stopped.

22 Q Okay. Now when these people came, what happened?

23 A I flagged them down. I believe -- yes, they
24 passed the car. They just turned around and came back and
25 came to the back of the Lincoln, parked in back of it.

1 Q Okay. Now at this point you were outside the
2 Lincoln. Where were you?

3 A I think I was in the rear of the Lincoln.

4 Q Okay. How many people got out of the car?

5 A Well, the man got out. He walks up to me and
6 starts talking to me. I'm telling him, you know, I got
7 a flat tire here, and all this other -- like the story,
8 you know. And I took him around and showed him the tire.

9 Q Which tire was it?

10 A Right rear, I believe.

11 Q Okay.

12 A And, you know, just talking to him and --

13 Q Okay.

14 A And I think I walked around to the driver's side
15 of the car.

16 Q Were you watching the other car during this period
17 of time?

18 A Not really. I had my back to it.

19 Q When did you first notice the other car again?

20 A The other car?

21 Q Yes.

22 A When they stopped.

23 Q No, I am sorry. Again. It stopped, the guy got
24 out and you are talking to him. When is the first time
25 you looked back at the other car?

1 A All right. We were walking on the driver's side
2 of the car, and I had my back to it and I heard commotion
3 going on back there, and I turned around and dad and Randy
4 were there and Ricky and Donnie were coming up, you know.

5 Q Was everybody else out of the car at this time?

6 A I'm not real sure. I don't remember seeing
7 anybody, but --

8 Q Okay.

9 A But one of the gals could have been out.

10 Q Okay. Then what happened?

11 A Well, you know, after I turned around and saw
12 what was going on back there, I asked the man to join
13 them, you know, and just walked back there.

14 Q Okay. And when you got back there, what did you
15 observe?

16 A Dad throwing down on them, dad and Randy.

17 Q Where were they at this time?

18 A Dad and Randy? I'm not real sure which side of
19 the car they were on.

20 Q Were they both together? Or were they on
21 opposite sides of the car?

22 A They got on opposite sides of the car. They were
23 there at one time, but I can't remember just where every-
24 body was positioned at at that time.

25 Q Okay. You said you saw your dad and Randy

1 throwing down on them. Were the people in the car at
2 this time or were they out?

3 A Like I said, I think that lady could have been
4 out.

5 Q Yes.

6 A One gal. But I saw a silhouette of somebody in
7 the car, so it could have been the gal, from the hair and
8 all that.

9 Q Okay. And then what happened?

10 A They got them out of the car, the rest of them,
11 and --

12 Q When you say "the rest of them," what do you mean
13 by "the rest of them"?

14 A The one that I saw the silhouette for got out of
15 the car. The lady was out after a while, and there was a
16 baby there, too.

17 Q Did they reach in and get the baby?

18 A I think the lady reached back and got the baby.

19 Q Okay. Then what happened?

20 A (No answer.)

21 Q Did any cars, or trucks, or anything go by
22 during this period of time?

23 A While we were there?

24 Q Yes.

25 A With those people?

1 Q Yes.

2 A No, none that I remember.

3 Q Okay.

4 A Then the guy was saying something to the effect,
5 you know, that he didn't want no trouble, and all this,
6 and said there was a .45 in the back of his car, and he --
7 I think somebody went back there and got it out then. I
8 can't remember just who.

9 Q Okay. Then what happened?

10 A Well, we loaded them up into the Lincoln and took
11 them back down to that road.

12 Q Did you turn the Lincoln around?

13 A Yes.

14 Q On the highway?

15 A Yes.

16 Q How far was it back to that road?

17 A Not very far.

18 Q Was it more than the length of a football field?

19 A If it was, it was just over.

20 Q Okay. So you turned the Lincoln around on the
21 highway. Did you -- who drove the Lincoln?

22 A I did.

23 Q When you turned it around on the highway, did you
24 go off of the gravel?

25 A The side of the road?

1 Q Yes.

2 A I don't think so.

3 Q Always stayed on the pavement?

4 A I'm pretty sure, yes.

5 Q Okay. You drove it back. I take it was very

6 hard to handle?

7 A Yes.

8 Q Okay.

9 A It wasn't hard to handle because the front tires

10 were still up, but --

11 Q It just bounced like hell?

12 A Yes. You go like five miles an hour.

13 Q Okay. Now you went -- then you turned left on

14 the dirt road, is that right?

15 A Yes.

16 Q And was the Lincoln -- was the Lincoln in front

17 of the Mazda or behind the Mazda?

18 A In front of it.

19 Q Where did you go then?

20 A We went down that dirt road a ways and then turned

21 off to the right on a gasoline road.

22 Q Okay. How do you know it was a gasoline road?

23 A I saw some -- you know how those things come out

24 for marking the gasoline, pipes coming out and they make

25 like an "H." I saw a little sign up there on it.

1 Q Do you remember what color the pipes were?

2 A No. It was dark out there. They are probably

3 white, though. The rest of them are.

4 Q Okay. You turned down that little road, right?

5 How far did you go?

6 A I'm not sure just how far. It was a little ways

7 down there, though.

8 Q The Mazda is following you in, right?

9 A (Witness nodding head.)

10 Q Okay. Did you stop right on the road? Or what

11 did you do?

12 A Yes, we stopped right on the road.

13 Q And what did they do with the Mazda?

14 A Backed it up to the Lincoln.

15 Q How did they back it up to the Lincoln? Did they

16 turn it around?

17 A Yes.

18 Q Which way did they turn it? To the left or to

19 the right?

20 A I don't know. I looked in my rear view mirror

21 and they were backing it up at that time -- you know,

22 bringing the rear end up to the back of the Lincoln.

23 Q How you transferred the stuff in the Mazda to the

24 Lincoln, or from the Lincoln to the Mazda, or what?

25 A Yes.

1 Q Just switched loads, is that right?

2 A Yes.

3 Q Okay. Where were the people at this time?

4 A Well, they had to take them out of the Lincoln and

5 set them in front of the Lincoln with the headlights on.

6 Q Were they in the road in front of the Lincoln?

7 A Yes, I think so.

8 Q Okay. And who did the switching?

9 A The switching of stuff?

10 Q Yes.

11 A It started out me and Ricky, and Randy came over

12 and started to help. And like he had left once or twice

13 to talk to the guy and come back to the Mazda and help.

14 Q Okay. Now you finished switching the stuff.

15 What did you do then?

16 A After switching the stuff over? Dad walked off

17 a ways up into the desert there, and then he came back and

18 told me to drive the Lincoln up here by this bush, or be-

19 tween these bushes, something like that, and back it up in

20 there.

21 Q Were they big bushes? Little bushes? Do you

22 remember?

23 A I can't remember.

24 Q Do you remember if they were as tall as the car?

25 A They could have been.

1 Q Did you have to back over any bushes to get where

2 you went?

3 A I think I backed between two bushes. I don't --

4 you know, I can't say for sure I didn't run over any

5 bushes.

6 Q Okay. Let's draw another little diagram here.

7 Here is the road and here is the road coming in. Okay?

8 You came -- you turned like this and came down the road,

9 is that correct?

10 A Yes.

11 Q And the Lincoln was pointed this way, is that

12 right?

13 A Yes.

14 Q And you looked in your mirror and you saw the

15 Mazda back up to the Lincoln?

16 A Yes.

17 Q How far away from the Lincoln was it?

18 A Probably four to six feet.

19 Q Probably four to six feet?

20 A Yes.

21 Q Okay. And it was facing the other way at this

22 point, is that right?

23 A Yes.

24 Q Back the way you had come?

25 A (Witness nodding head.)

1 Q Okay. Now you backed the Lincoln into the
2 desert?
3 A Yes.
4 Q Okay. Do you remember whether there was one or
5 two roads?
6 A For the gasline road?
7 Q Yes.
8 A I just remember one.
9 Q You just remember the one road?
10 A (Witness nodding head.)
11 Q So you backed off over into the desert. How far
12 did you go?
13 A Well, it was up -- up in here. I would say
14 about, you know, to here.
15 Q What did you do? Pull forward and then back?
16 A Yes, pulled forward and then back like this.
17 Q Okay. So you pulled forward in the Lincoln. We
18 will make that "L2." And then you backed over into the
19 desert like so?
20 A Yes.
21 Q And we will call that "L3." We will call them
22 "M1." And "L1."
23 Okay. Did the Mazda stay in the same place?
24 A Yes.
25 Q Okay. What happened after you backed this over

1 here?
2 A (No answer.)
3 Q Had anyone moved the Mazda?
4 A I don't think so.
5 Q Okay.
6 A If they did, I didn't see it.
7 Q Okay. Then what happened?
8 A Well, dad followed me out there a ways, walking,
9 and he shot the radiator and all this as I was getting
10 out, walking back over here. You know, just like --
11 Q Now did you do anything after you got out? Did
12 you take anything off the car?
13 A I took the license plate and the keys.
14 Q Okay. Was this before your dad came up and shot
15 it?
16 A Yes. I don't think he would shoot it while I was
17 there. At least I hope not.
18 Q Okay. What did you do? You shut it down and
19 took the keys?
20 A (Witness nodding head.)
21 Q And you took the license plate off?
22 A (Witness nodding head.)
23 Q And there was only one plate on it?
24 A Yes.
25 Q On the rear?

1 A (Witness nodding head.)
2 Q Was that a New Mexico plate?
3 A I think so.
4 Q Okay. And then your dad shot the radiator out of
5 the Lincoln?
6 A Yes.
7 Q And do you remember how many shots he used?
8 A I think it was more than one. I wouldn't know
9 the right amount for it, though.
10 Q Okay. Where was he standing when he did that?
11 A Right about here.
12 Q Okay. So he would be facing the front of the
13 Lincoln then? You are telling me he would be to the front
14 and a little to the right of the front?
15 A I think he was directly in front of it.
16 Q You think he was directly in front of it?
17 A Yes.
18 Q Okay. Then what happened?
19 A Well, he shot the Lincoln and we walked back down
20 to the Mazda.
21 Q Okay. You walked back down over here?
22 A Yes.
23 Q Had anybody walked back down over this way?
24 A I don't think so. You mean me or my dad?
25 Q I don't know. Did anybody walk over here?

1 A No. The only ones that were up there were me and
2 my dad.
3 Q Okay. What kind of shoes did you have on?
4 A I had work boots on.
5 Q Okay. Did they have a waffle-type sole?
6 A No.
7 Q What kind of sole did they have?
8 A They are -- well, I'm not sure just what kind
9 they were. It was something like these, though, you know,
10 with a -- like a waffle-stomper.
11 Q Yes.
12 A They were lace-up boots, up to here.
13 Q That is what I'm saying. Did they have like a
14 square pattern on the bottom?
15 A A square?
16 Q Yes, across here.
17 A I think they were like this (indicating).
18 Q Okay. Let -- just a minute. I'm going to call
19 this Exhibit B.
20 Why don't you, on Exhibit C, draw me the pattern on
21 those boots.
22 A It goes like this, I think.
23 Q Okay.
24 A And then comes up and --
25 Q Okay.

1 A They got them over there if you want to look at
2 them.
3 Q Okay. Do you know what kind of shoes everybody
4 else had on?
5 A I think Ricky had Wellingtons on. I think dad
6 had his -- a pair of Wellingtons on, the kind you
7 described earlier, about the, you know, the --
8 Q The square pattern?
9 A You know, the wavy effect like this. Donnie was
10 wearing a pair like that. They are earth shoes, I
11 believe.
12 Q Let's put a "1" by the pattern you described.
13 Do you remember anybody having a pattern that was
14 something like this?
15 A Oh, with squares?
16 Q Yes, on the bottom.
17 A Well, I don't go around looking at people's
18 soles.
19 Q Yes.
20 A Really.
21 Q Okay.
22 A Randy had the combat boots on, Vietnam combat
23 boots, and dad and Ricky had Wellingtons on. I think
24 Wellingtons are a flat surface like these.
25 Q Yes. Okay. You and your dad walked back over

1 this way, is that right?
2 A Yes.
3 Q And then what happened?
4 A Well, it wasn't too long after that that we
5 escorted the people up to the Lincoln.
6 Q Okay. And how did you take them?
7 A What it was, I think --
8 Q Well, let's go back.
9 You had the people in front of the Lincoln, right?
10 A Yes.
11 Q I take it when you moved the Lincoln, they moved?
12 A Off to the side.
13 Q Okay. Off to the -- off to your right as you
14 were driving the Lincoln, right?
15 A Yes.
16 Q Okay. Is that where they kept them?
17 A I think so. When we came back -- or else they
18 moved them closer to the Mazda.
19 Q Okay. Then what happened?
20 A Well, they escorted them up there.
21 Q Okay. Who escorted them up there?
22 A All of us.
23 Q Okay.
24 A The five of us.
25 Q Okay.

1 A Then loaded them into the back of the Lincoln.
2 Q Was everybody in the back?
3 A Yes. The two gals, the dude and the baby.
4 Q Were all in the back seat of the Lincoln?
5 A No. The younger gal was in the front seat, I
6 believe.
7 Q Was she in the center or on one side or the
8 other?
9 A I don't know. I never got close to the Lincoln
10 and looked.
11 Q You didn't get close?
12 A No. I was standing off over in here.
13 Q You are pointing somewhere off to the left as you
14 face the Lincoln then, right?
15 A Well, see, the only ones that were here, I
16 believe, were dad and Randy. I think Randy was over here
17 and dad was here.
18 Q Okay. And by "over here," you are talking about
19 your dad was on the left-hand side at the rear?
20 A Randy was on the driver's side and my dad was on
21 the passenger side.
22 Q Okay. Then what happened?
23 A Well, the guy had -- you know, he was -- you know,
24 about that, you know, saying he didn't want no trouble,
25 and all this, saying things like, you know, "let" -- "leave

1 us alone. We will stay out here as long as you want," and
2 all of this. "Just give us some water," and all of this,
3 you know. "We will stay out here as long as you want."
4 And then I went over for a few minutes and I looked
5 at my dad. About that time I could see he was like having
6 a conflict with himself.
7 Q What do you mean by "he was having a conflict
8 with himself"?
9 A Fighting his battles, you know. I think now, you
10 know, I could say probably if to let them live or kill
11 them. But, at that time, I couldn't.
12 Q Did he ever say anything about that? Did he ever
13 ask anybody whether they should let them live or let them
14 die, or anything like that?
15 A I don't remember if he said anything like that.
16 Q Okay. Then what happened?
17 A Well, you know, just shortly after I saw that,
18 you know, conflict he was having, I think Donnie had
19 already walked back down to the Mazda, and me and Ricky
20 were still up there, and he told me and Ricky to go get
21 some water, get a jug of water for these people.
22 So like we walked on back down to the Mazda and, you
23 know, we got out there and I think we, you know, got the
24 water jug filled, and all that all ready by the time the
25 blast came. You know, the shots.

1 Q Where were you when the shots came?
 2 A Down at the Mazda. We were --
 3 Q Okay.
 4 A Me, Donnie and Ricky were down there.
 5 Q You were at the Mazda?
 6 A (Witness nodding head.)
 7 Q Where at the Mazda? Were you at the trunk, or at
 8 the door, or where?
 9 A Well, I would say we were stationed from the rear
 10 to right about here on the side.
 11 Q Okay.
 12 A You know.
 13 Q Okay. And all three of you were right there,
 14 right?
 15 A Yes, I think so.
 16 Q Okay. And then you heard -- did you see anything
 17 before you heard the blast? Did you see anybody raise
 18 their weapons or anything like this?
 19 A No. You know, I was putting water in there,
 20 getting that stuff. We were loading it back up, I think,
 21 loading the Mazda back up because the water was at the
 22 bottom of all of it. And then I turned around and I could
 23 hear those shots and I could see flashes, you know. I
 24 could see silhouettes of the car and the people.
 25 Q Okay. Now could you see the way -- could you see

1 the rifles pointing, the shotguns pointing?
 2 A Well, from the angle I was, you know, I could
 3 see they were pointing at the car.
 4 Q How could you tell that? From the flashes?
 5 A From the flashes. They weren't too far away from
 6 the car.
 7 Q How far away were they?
 8 A All right. Say this is the car. I would say
 9 right about here.
 10 Q Two or three foot?
 11 A The people were standing, yes.
 12 Q Okay. But you couldn't see where the shots went?
 13 A Huh?
 14 Q You couldn't really see where the shots went?
 15 A Well, they looked like they were aimed at the
 16 car.
 17 Q They looked like they were aimed at the car?
 18 A Yes.
 19 Q Okay. How many flashes did you see?
 20 A I can't really remember then, you know. I didn't
 21 count them all. It was all happening, you know, pretty
 22 quick there and --
 23 Q Okay. Did you ever see flashes come from both
 24 sides of the car at the same time?
 25 A Simultaneously.

1 Q Simultaneously?

2 A Yes. You know, like one right after the other.

3 Q How long in between?

4 A Just as fast -- you know, dad had a Browning

5 automatic, sixteen.

6 Q A what?

7 A Browning automatic, sixteen gauge.

8 Q Yes?

9 A And I think Randy had a pump.

10 Q What gauge was that?

11 A I don't know. We had two of them.

12 Q Okay.

13 A I don't know what gauge it was. And then, you

14 know, like you know how you work a pump. It was like that.

15 You know, that is how they were coming. An automatic

16 would work faster. But they were coming like that.

17 Q Did the flashes light up the scene at all or --

18 A Just -- I couldn't make out nothing.

19 Q Could you tell who was on which side of the car

20 at that time?

21 A No, not really. Dad and Randy are built, you

22 know, close to the same.

23 Q So there is no way you were close enough to

24 distinguish who was who?

25 A I could see silhouettes, but they were -- you

1 know, the last time I was up there, dad was on one side

2 and Randy was on the other.

3 Q But what I'm saying, put it back in your mind

4 right now.

5 From those silhouettes, can you tell me who was on

6 which side and who --

7 A Not from standing at the Masda, no.

8 Q Okay. Then what happened?

9 A Well, you know, the shots went on longer than

10 what they should have.

11 Q What do you mean by that, "longer than what they

12 should have"?

13 A Well, I think they had reloaded once or twice,

14 because the gun only holds like five or six shells, you

15 know. I'm pretty sure the number of shells shot was over

16 that.

17 Q Okay.

18 A It just shouldn't have taken that much.

19 Q Okay.

20 A You know, then like Randy had come back down and

21 told us to load up, get into the car. You know, the three

22 of us to get into the back seat. And not long after that,

23 dad came back down.

24 Q After Randy came back, did you hear any more

25 shots?

1 A About one or two.
 2 Q One or two more shots?
 3 A (Witness nodding head.)
 4 Q Were they fairly well spaced out?
 5 A I think so.
 6 Q Was the firing constant until Randy got back?
 7 Or did it break off before he came back?
 8 A I think it broke off just before he came back,
 9 because dad had told him to come back and tell us to load
 10 up in the car.
 11 Q Okay. What I am asking is, Randy was what?
 12 Maybe fifty yards away from you?
 13 A What do you mean? Coming back to the Mazda or --
 14 Q Yes. How far was the Mazda from the Lincoln?
 15 A I don't really know.
 16 Q Okay. Randy got back. Did you see him walk back?
 17 A I saw him when he got back to about right here
 18 at the edge of the road.
 19 Q Okay. How had the shots stopped before you saw
 20 him?
 21 A Just before.
 22 Q Just before you saw him?
 23 A Yes.
 24 Q Just what? Almost instantaneously?
 25 A Yes. You know, just a few seconds before. You

1 know, like about enough time to walk from there to there.
 2 Q Okay. Randy told you to load up, and you heard
 3 a couple of more shots, and these were fairly well
 4 spaced out, is that right?
 5 A Yes.
 6 Q Okay. And then what happened?
 7 A Dad came back and Randy and him got into the car.
 8 Q Okay. Who was driving?
 9 A Randy.
 10 Q And where did you go?
 11 A Back down this road and back out onto the
 12 highway.
 13 Q Okay. What did you do? You just pulled straight
 14 out and went down?
 15 A Yes.
 16 Q Okay. Then did you have any discussion about
 17 what had happened or --
 18 A No. It got real quiet in the car.
 19 Q Okay. Did you ever talk about it?
 20 A I don't think so.
 21 Q You never talked to anybody else about it after
 22 that?
 23 A No. I just -- I wanted to forget it.
 24 Q Okay. Where did you go from there?
 25 A We got back on that highway and we headed back in

1 the direction we were going before. And, you know, we
2 were hitting back roads again, and all this. I don't
3 know.

4 Q Did you ever get on the freeway?

5 A I don't think so. We may have, but --

6 Q Okay. Did you ever turn back south again?

7 A South?

8 Q Yes. Back towards the way you were coming?

9 A I'm not really sure.

10 Q Okay. Let me ask you this:

11 If you take that road straight on up from where you
12 went till you come to Quartzite, do you remember that and
13 Interstate 10?

14 A I remember a freeway, going over on the overpass.

15 Q Okay. You went over the freeway, right?

16 A Yes.

17 Q Okay. Then did you keep heading north, the way
18 you were going?

19 A I don't think so. I think we turned off either
20 east or west.

21 Q On the freeway or --

22 A I don't think we got onto a freeway. I think it
23 was like an access road.

24 Q Okay. Did you ever pull into a rest stop?

25 A Not that I can remember.

1 Q Okay. Now after that, where did you head?

2 A I can't -- you know, I don't know directions.
3 We probably backtracked quite a bit, you know.

4 Q And where were you headed? That is what I am
5 asking.

6 A Well, we ended up I think in -- up in the woods,
7 in Sherwood Forest.

8 Q Where is Sherwood Forest?

9 A It's up by -- it's in between -- you know, where
10 the Grand Canyon road is leading into Grand Canyon
11 National Park.

12 Q Yes.

13 A It's right in that area.

14 Q Right in that area?

15 A (Witness nodding head.)

16 Q Okay. Let me ask you this:

17 While the firing was going on at the Lincoln, was
18 there ever time, enough time to pass between shots that
19 they could have switched sides or traded shotguns?

20 A I can't really say for sure. There could have
21 been, but I -- you know, I just don't remember if there
22 was or not.

23 Q Did you watch the silhouettes all the time the
24 firing was going on?

25 A No.

1 Q What did you do?

2 A You know, I watched when it started and I turned

3 away. And, you know, I turned around and back a couple of

4 times and checked, looking for my brothers and all this.

5 Q Did you see the silhouettes moving? Or were they

6 pretty well standing still and firing?

7 A I would say, you know, they were on the -- there

8 were two silhouettes on each side of the car.

9 Q Two silhouettes on each side of the car? Or one?

10 A One, I mean. Two up there, but one on each side

11 of the car.

12 Q Okay.

13 A You know, I can't say for sure whether they

14 changed sides or not.

15 Q Okay. Every time you looked, were both

16 silhouettes firing?

17 A No.

18 Q Which one wasn't firing?

19 A Well, you know, it changed off and on. Sometimes

20 I would turn around and see, you know, the side I thought

21 my dad was on would be firing. And sometimes I would turn

22 around and see the -- it would be the other side firing.

23 Q Okay. So when you say the shots were

24 simultaneous, do you mean they came one right after the

25 other, real fast?

1 A Well, to start off with, you know. But I would

2 say they slacked off.

3 Q Okay. What were your dad and Randy wearing?

4 A Clothes?

5 Q Yes.

6 A I don't know.

7 Q Did they have jackets on?

8 A I kind of doubt it. It was pretty warm that

9 night.

10 Q Did they have shirts on? Or T-shirts?

11 A Oh, shirts, I am sure.

12 Q Shirts?

13 A I think they were wearing the same pants they got

14 busted in.

15 Q Were those blue-jean type?

16 A Well, they were the ones they got busted in.

17 They were like a dress pant.

18 Q Okay.

19 A You know, they were Levi dress pants, slacks

20 like.

21 Q But the same type of Levi pockets?

22 A Yes, I think so. Not of this material, like a

23 knit.

24 Q Yes. Okay. Do you know what I am talking about?

25 This type of pocket that runs sort of like this that most

1 Levi's have?

2 A Oh, yes.

3 Q It was this type of pocket, wasn't it?

4 A I would say so, yes.

5 Q Okay. And were the pants real loose on them?

6 A I don't know. They fit.

7 Q Okay.

8 A You know, I didn't pay that much attention.

9 Q Okay. What kind of shirts did they have?

10 A Well, as I remember, the supplies we had, all

11 that we had in there were button-up shirts.

12 Q Button-up shirts?

13 A Yes.

14 Q One pocket? Two pockets?

15 A I don't know.

16 Q Is there anything else you remember?

17 A That is about it.

18 Q You never discussed this with your dad afterwards?

19 A I don't think I did. I just kind of wanted to

20 put it off because it was just too much for me, really,

21 you know.

22 Q Okay. Do you remember, what kind of night was

23 it? Was the moon shining? Was it dark?

24 A I think it was pretty dark.

25 Q It was pretty dark?

1 A It was pretty dark out there, yes.

2 Q Do you remember seeing any landmarks around there?

3 A Just desert.

4 Q Any cactus, or anything like that?

5 A No. Like I think what it was was scrub desert,

6 you know.

7 Q Did you see any saguaro, or anything like that?

8 A I don't think so.

9 Q Okay. When you turned off on this road, was it

10 gravel or dirt when you turned off the highway?

11 A Off the highway?

12 Q Yes.

13 A Gravel or dirt? I don't remember which it was.

14 It could have been gravel.

15 Q Was it a marked road?

16 A A marked road?

17 Q Yes.

18 A I think it headed down to a housing deal, or

19 something like this, you know.

20 Q Did it have a sign on it?

21 A Up there at the -- when you just turn on to it,

22 I think so.

23 Q When you came down that road, did you go through

24 any washes?

25 A I don't remember any. That was a long time ago,

1 you know.
2 MR. BROWN: I don't have anything else.
3
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10 I HEREBY CERTIFY that I made a stenotype record of
11 the proceedings had in the foregoing matter; that the
12 said stenotype record is full, true and accurate; and
13 that the foregoing 55 pages constitute a full, true and
14 accurate transcript of the same to the best of my skill
15 and ability.
16 DATED this _____ day of February, 1979.
17
18
19 Janet Emmert
20 Official Court Reporter
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1 you know.
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16 DATED this _____ day of February, 1979.
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19 Janet Emmert
20 Official Court Reporter
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PRESENTENCE REPORT

STATE OF ARIZONA,
Plaintiff,

vs.

TISON, Ricky Wayne,
Defendant.

CASE NO.: 9299

JUDGE: The Honorable S.W. Vedde
Division Three
DATE: March 6, 1979
ADDRESS: Arizona State Prison
Florence, Arizona 85112
ETHNIC: Caucasian
ALIAS: None
PROSECUTOR: Michael Irwin
AGE: 29 (DOB: 12/07/50)
ATTORNEY: Michael Beers
FBI NO.: 598-684-78

OFFENSE: Four (4) Counts of
First Degree Murder;
Three (3) Counts of
Kidnapping; Two (2)
Counts Armed Robbery;
One (1) Count Grand
Theft Auto. FELONIES.
PENALTY: \$13-451, \$13-452 as
amended, \$13-453 as
amended, \$13-492(AC)
as amended, \$13-461
and \$13-463, as amend-
ed, \$13-672, as amend-
ed.

STATEMENT OF OFFENSE.

On August 9, 1978, a Warrant was issued for the arrest of this defendant, Ricky Wayne Tison, charging him with Three (3) Counts of Murder in the First Degree, Three (3) Counts of Kidnapping, Two (2) Counts of Armed Robbery and One (1) Count of Theft of a Motor Vehicle. On August 17, 1978, and after the recovery of a fourth (4th) victims body, the entire case was presented to the Yuma County Grand Jury and a fourth (4th) Count of Murder in the First Degree was added to the original charges. The charges were then Four (4) Counts of Murder in the First Degree, Three (3) Counts of Kidnapping, Two (2) Counts of Armed Robbery and One (1) Count of Theft of a Motor Vehicle. On August 11, 1978, this Defendant, Ricky Wayne Tison, with two (2) co-defendants, were arrested by Arizona Law Enforcement Officers in Pinal County, Arizona. These co-defendants being Raymond Tison, and Randy Greenwalt. Two (2) additional co-defendants, Donald Joe Tison, who was killed during an exchange of gun fire with officers at the time of arrest, and Gary Tison, whose body was found eleven (11) days later a short distance away, having died of heat exposure.

On February 27, 1979, the defendant, Ricky Wayne Tison, was found guilty by a Yuma County Jury on all counts as charged on the Indictment.

OFFICERS VERSION OF OFFENSE.

The circumstances surrounding this case are taken from the Yuma County Sheriff's reports 08-10799-78, Medical Examiner Reports, J78-73/5263, J78-73/5262, J78-71/5201 and J78-70/5260.

TISON, Ricky Wayne

Page 7-8

OFFICERS VERSION OF OFFENSE.

Numerous FBI Laboratory Reports, Arizona Criminal Investigation Team Reports and Summaries, Pinal County Sheriff's Report 078-5-861 and the Defendant's Statements.

These circumstances are as follows. Sometime on or about August 1, 1978, the victims in this case, John Lyons, age 34, his wife, Dorenda Lyons, age 23, their child, Christopher Lyons, age 12 months and his niece, Teresa Tyson, age 15 years, left the Yuma area on a vacation. They were driving a 1977 Honda automobile belonging to the Lyons family. On August 6, 1978, at approximately 4:00 p.m., a Arizona Fish and Game Officer found the Lyons family shot to death in and around a 1968 Lincoln automobile. A search of the area failed to locate the 15 year old niece, Teresa Tyson. The car and bodies of the Lyons family were found of a mile from Highway 95 at approximately Milepost 84-1. John Lyons body was found approximately 25 feet to the rear of the car. The Autopsy Report show he received shotgun wounds in both wrists, shotgun wound to back of left shoulder, shot at close range, shotgun wound of right abdomen and chest, shotgun wound at close range left rear of the skull, and shotgun wound of left upper chest. Cause of death listed as shotgun wounds of head and chest.

The body of Dorenda Lyons was found in the back seat of the Lincoln automobile slumped over in the seat holding her 12 month old son, Christopher. The Autopsy Reports state she received a close range shotgun wound at the left rear of her skull, a close range shotgun wound of the right chest and a shotgun wound of the left chest. Cause of death listed as shotgun wound of head and chest.

The body of Christopher Lyons was found with his mother in the back seat of the Lincoln automobile, where he was in his mother's arms. The Autopsy Report show he received a gunshot wound on the whole left side of his head. The cause of death is listed as shotgun wound to the head.

At the scene of the Murder, officers recovered thirteen (13) spent 16 gauge shotgun shells, five (5) spent 20 gauge shotgun shells and two (2) spent .43 caliber cases.

Through investigative leads, the officers, found that Gary Tison, Donald Tison, Ricky Tison, Raymond Tison and Randy Greenwalt were suspected of committing these homicides. Due to the fact that Teresa Tysons body had not been found, it was thought the five had taken her as a hostage.

On August 11, 1978, after Ricky Tison, Raymond Tison and Randy Greenwalt were captured at the Pinal County Road Block, an interview followed, one of them (unknown to this interviewer) told where Teresa Tysons body might be located. A search of the area was again conducted and Teresa Tysons body along with the Lyons dog, was found .1 mile from the location of the Lincoln automobile, where the Lyons bodies had been found earlier. It appeared that she was trying to reach Highway 95, as she had crawled in that direction.

The Autopsy Report show Teresa Tyson received a shotgun wound to the right hip and apparently bled to death, but as the report states because of the extensive decomposition they were unable to determine if there were other wounds. The cause of death is listed as a shotgun to the right hip.

On August 11, 1978, the Lyons family automobile that had been stolen, after their Murder, was found hidden near Flagstaff, Arizona.

OFFICER'S VERSION OF OFFENSES CHARGED

On August 17, 1978, the Arizona State Crime Laboratory identified one (1) finger print belonging to Ricky Tison, two (2) finger prints belonging to Donald Tison and one (1) finger print belonging to Randy Greenawalt in the Honda van. When the car was recovered it was found that both front seats, and the radio were missing. The car had been repainted to a gray color and the license plates were missing.

A Time Chart furnished with the reports, indicate that the three (3) surviving Defendants in this case had been involved in the following crimes: On July 30/1978, the Tisons had effected an Escape of their father, Gary Tison, and Randy Greenawalt from the Arizona State Prison with two (2) loaded firearms. The above mentioned Defendants, murdered the John Lyons family and their niece, Teresa Tyson, as well as robbing them and stealing their automobile. In the State of Colorado, the Defendants, murdered, robbed and stole the car of James and Margene Judge. The Defendants on August 11, 1978, ran run Road Blocks in Pinal County, shooting at the deputies who were trying to stop and arrest them, resulting in the gunshot death of one of the co-Defendants, Donald Tison, and the subsequent death of co-Defendant, Gary Tison, whose body was found August 22, 1978, in the desert area near the road block where he escaped. All of these crimes occurred within thirteen (13) days, coming to the conclusion at the time of their arrest on August 11, 1978.

At the time of their arrest, the defendant and co-Defendants had the following weapons in their possession:

1. Dakota .45 caliber Revolver, serial #32941 bought by Dorothy Tison on May 20, 1978, from a gun dealer in Casa Grande, Arizona, who was a friend of Ricky Tison.
2. 1-Smith and Wesson .357 Magnum Revolver serial #8164017.
3. 1-Colt caliber .38 Automatic serial #3337006, which was in the possession of Donald Tison when he was killed at the Road Block.
4. 1-Rem-UMC, .380 caliber Automatic serial #1000000.
5. 1-Colt .45 caliber Automatic serial #332313. This weapon was found under the body of Gary Tison upon discovery of his body.
6. 1-Ruger .22 caliber Magnum Revolver serial #113286, this weapon had an extra cylinder.
7. 1-Winchester Model 70 caliber .243 Magnum Rifle serial #009148.
8. 1-Purshand Arms 12 gauge shotgun serial #000081, the barrel of this weapon had been sawed off.
9. 1-Beretta 12 gauge shotgun serial #004268 stock and barrel of this weapon had been sawed off.
10. 1-Browning 16 gauge shotgun serial #8513067 barrel of this weapon had been sawed off.
11. 1-Master Magnum 20 gauge shotgun serial #0860834.

From information gathered on the above weapons, the .380 Automatic was owned by a business partner of the man that sold the Tison the .45 caliber Revolver. When the man was questioned about who he sold the Automatic to, he said he sold the Automatic to an unknown subject in a bar, in 1978.

OFFICER'S VERSION OF OFFENSES CHARGED

Raymond Tison asked a watchman who worked for the same company as he did, Mr. Gilbert Pury Weeks, if he would "turn down" a shotgun barrel for him. Mr. Taylor refused. This was before the escape from the Arizona State Prison.

Through witness statements present during the escape from the Arizona State Prison, Gary Tison was armed with a .38 caliber Revolver with a silencer attached, Randy Greenawalt was armed with a shotgun, Donald Tison was armed with a shotgun, Raymond Tison was armed with a shotgun and Ricky Tison was armed with a shotgun.

Through information gathered from the FBI report of the thirteen (13) 16 gauge shotgun shells found at the scene of the Lyons Family and Teresa Tyson Murder all but one (1) has been identified as being fired from the Browning 16 gauge shotgun serial #8513067. Of the five 20 gauge shotgun shells found at the Lyons-Tyson Murder scene all five have been identified as being fired from a Master-Magnum 20 gauge shotgun serial #0860834.

For a more detailed account of the circumstances involving this case, all reports will be in possession of the interviewing officer for reference by your Honor upon request.

DEFENDANT'S STATEMENT

On February 27, 1979, this officer took a Presentence Interview form to the Yuma County Jail for the defendant, Ricky Wayne Tison, to fill out. Attached to this form was a note written by this officer informing the defendant, Ricky Tison, that this was required for his Presentence Report and that this officer would pick up the completed form on Monday, March 5, 1979. On March 5, 1979, this officer went to the Yuma County Jail contacted the jailer in regards to recovery of the form the defendant, Ricky Tison, so that preliminary work could be started on the Presentence Report. At that time I was informed by the Jailer, and handed back the form along with the attached note that the defendant, Ricky Tison, did not wish to talk to this officer until he could confer with his attorney. On March 6, 1979, this officer went to the Yuma County Jail at approximately 8:30 p.m. with the intent of hopefully obtaining a verbal interview with the defendant, Ricky Tison, regarding this offense. Again, this officer was informed by the Jailer that Ricky Tison would not talk to this officer until he contacted his attorney, who had moved and Ricky did not know where he had moved nor his telephone number. Therefore, Ricky Tison advised the Jailer to inform this officer that when he contacted his attorney he would then see about submitting an interview with this officer.

Attached to the Oral Statement made by Ricky Tison on January 29, 1979, in Pinal County.

It is this officer's understanding that there are additional statements given by Ricky Tison to which the Judge is aware of, which this officer does not have access to.

CO-DEFENDANTS

Randy Greenawalt, age 29, awaiting sentence on the charges of, Four (4) Counts of First Degree Murder, Three (3) Counts of Kidnapping, Two (2) Counts of Armed Robbery and One (1) Count of Grand Theft Auto.

Raymond Curtis Tison, age 19, awaiting sentence on the charges of, Four (4) Counts of First Degree Murder, Three (3) Counts of Kidnapping, Two (2) Counts of Armed Robbery and One (1) Count of Grand Theft Auto.

OTHER PENDING CHARGES

Charges of Two (2) Counts of Murder in the First Degree, Two (2) Counts of Kidnapping in the First Degree, and Two (2) Counts of Conspiracy, have been filed in Rio Grande County, Del Norte, Colorado, on November 9, 1978, in the Murder of James and Margene Judge. Trial date is unknown.

The above charges have also been filed against the two (2) co-defendants in this case.

PRISON RECORD

JUVENILE: Due to the fact that this officer could not get any information on this defendant's past criminal record from the defendant, there is no information regarding his juvenile arrest.

ADULT FELONY: This information is taken from the Pinal County Presentence Report, it states the following:

On April 9, 1978, the defendant was arrested in Casa Grande, Arizona for Burglary. Through a Plea Agreement this defendant pled guilty to Petty Theft on April 16, 1978, and received a six (6) months suspended sentence in the Casa Grande Justice Court. As a condition of his probation, the defendant was ordered to pay \$16.20 restitution and to clean six (6) miles of the Gila Bend Highway.

In Pinal County, the defendant was charged with the following crimes: Thirteen (13) Counts of Assault of a Deadly Weapon, One (1) Count of Aiding and Abetting an Escape, One (1) Count of Taking Prohibited Articles into the Arizona State Prison, Four (4) Counts of Assault with a Deadly Weapon, One (1) Count of Possession of a Stolen Motor Vehicle, One (1) Count of Fleeing or Attempting to Elude a Pursuing Law Enforcement Vehicle. After being found guilty by a Jury Trial in Pinal County of the above charges, the defendant received the following sentence: Two (2) sentences to thirty (30) years to life to date from August 11, 1978, Four (4) sentences of Four (4) to Five (5) years in the Arizona State Prison to be served consecutively with the life sentences.

Attached you will find a FBI No Prior Report, dated August 12, 1978. It appears that the time the Pinal County Sheriff's Department sent in the finger prints on this defendant the charges involving the Pinal County crimes had not yet reached their files.

SOCIAL HISTORY

The following information is taken from the Pinal County Presentence Report, which is a combination of information of both, Ricky Wayne Tison and Raymond Curtis Tison. It is as follows:

The defendant was born on December 7, 1950, in Casa Grande, Arizona. His father being Gary Gene Tison, deceased, having died in 1978, and his mother being Dorothy Tison, age 39.

From this marriage there was three children born, with the defendant being the middle child, having two brothers, Donald Joe Tison, who was killed in a head block on August 11, 1978, at the age of 30, and Raymond Curtis Tison, age 19, co-defendant, awaiting sentence on these offenses.

The defendant claims a stable, happy home life with his parents and brothers when the family resided in a farm near Casa Grande, Arizona. They resided on the farm until his father's commitment to the Arizona State Prison when the defendant was approximately six or seven years of age.

SOCIAL HISTORY CONT'D.

In 1967, the mother and children moved into the city limits of Casa Grande, residing there briefly before moving to Wilmington, California. Family was residing in Casa Grande when the father escaped from the Arizona State Prison, taking a guard hostage and killed him. After the father's trial and sentence to life imprisonment, the family moved to California, and remained there for about one year. In 1968, the family moved to Phoenix, and established residency.

The defendant stated that he was especially close to his maternal grandparents who had a significant bearing on them, him and his brothers, upbringing in the Casa Grande area while their mother was working and the father was in the Arizona State Prison. He described the family as being a tight close-knit family, stating he had many friends in the Casa Grande area as he always returned to the area to live with the grandparents during the summer months vacations. The defendant stated the mother decided to move to California in 1967, because the family became *personae non gratae* after the father's escape from prison which involved the killing of a prison guard and a shootout with the Casa Grande Officers.

MARITAL HISTORY

offspring.

The defendant is single, has never been married, has no

PRESENT PHYSICAL & INTERPERSONAL ENVIRONMENT

At the present time the defendant is serving time at the Arizona State Prison, thirty (30) years to life, as a result of he and his brother's engineering the escape of Gary Tison and Randy Greenswalt from the Arizona State Prison, in Pinal County.

Prior to his commitment, it appears that the defendant resided with his mother in the Casa Grande, California and Phoenix areas. Over the past five years the defendant spent considerable time in the Casa Grande area with his aunt and grandparents. Although, his permanent residence was with his mother in the Maryvale area of Phoenix, Arizona.

EDUCATION

The defendant completed the ninth grade of school in Phoenix, Arizona. He dropped out of the tenth grade after attending classes for approximately two weeks at Maryvale High School because he disliked going to school. The defendant related that he lost interest in school and began ditching classes when he was in the eighth grade.

RELIGION

The defendant indicated no religious preference or affiliation. He related that he attended church with his grandmother as a youngster in Casa Grande, Arizona.

INTEREST & LEISURE TIME ACTIVITIES

The defendant stated that in his leisure time he enjoys woodworkin and exploring or "tinkering" with mechanical and electrical equipment.

PHYSICAL HEALTH

The defendant stated that he is in good health, he occasionally is bothered with stomach ulcers, but suffers from no other physical disabilities, or medical problems.

MENTAL & EMOTIONAL HEALTH

The Pinal County has ordered a full-scale Psychological Evaluations on this defendant. This report is attached to this Presentence Report.

SUBSTANCE USE OR ABUSE

This officer found no information under this subject in the Pinal County Presentence Report.

EMPLOYMENT HISTORY

For a one month period in the Spring of 1978, the defendant was employed as a combine driver with Baker's Custom Harvesting, Casa Grande, Arizona. Prior to that the defendant worked intermittently as a roofer's helper at Bud Howe Roofing, Casa Grande, Arizona. He also worked as a gas station attendant.

MILITARY HISTORY

NONE.

FINANCIAL CONDITION

or liabilities at this time.

It appears that this defendant has no significant financial assets

REFERENCES

Attached is a letter addressed to the Honorable Douglas W. Reddie, from a James E. Collins, Jr., regarding character references for both, Ricky Tison and Raymond Tison.

SUMMARY AND EVALUATION

This entire crime spree started with the defendant, Ricky Tison, and his brother, Raymond Tison, planning and obtaining weapons and then committing the escape of two (2) known dangerous criminals from the Arizona State Prison. Both prisoners, Gary Tison, father of the defendant, and Randy Greenawalt, were Murderers. It was known by this defendant that his father, Gary Tison, had killed a prison guard in his last escape from the prison. This officer feels they also had knowledge of the dangerousness of Randy Greenawalt, due to the amount of planning that went into this escape. It is felt that Gary Tison told them the entire background of Randy Greenawalt. During the escape they were armed with loaded weapons and it is felt that they would have been used if needed by all of the defendant's involved.

At the stopping of the Lyons vehicle, in Ricky Tison's statement, all were armed and helped in subduing the Lyons Family and Teresa Tyson. It is felt that when the victims were taken into the desert area these defendants knew full well of what was to occur. It is true other than the defendant, Ricky Tison, saying that Randy Greenawalt and Gary Tison committed the Murders, just who pulled the triggers is unknown. This defendant, Ricky Tison, could just have well committed the Murders or a Murder as any of the other co-defendants. It is known of two statements that Ricky Tison has given and he has told a different story in both. The one given on January 26, 1979, pretty well coincided with all of the reports that have been submitted and read up to this point. It appears through the report reviews that the defendant, Ricky Wayne Tison, was the leader of the outside planning and the assembly of the equipment to be used for the escape, which touched off the heinous crimes that were committed in a short period of time that all five (5) were free.

It is felt that after the Lyons Murder and Teresa Tyson's Murder, anytime this defendant, Ricky Tison, if he had so opposed to the Murder of the victims, could have gotten away from his father.

SUMMARY AND EVALUATION CONT'D.

Although, he implies that his father had complete control over all circumstances. It is found on several occasions that the father left, if what Ricky Tison says is true, he and his brothers alone where escape could have been possible and even in getting away from the dangerous individuals that they supposedly at this time knew that Gary Tison and Randy Greenawalt were.

AGGRAVATING CIRCUMSTANCES

Through a review of the reports and of the statements of this defendant, Ricky Wayne Tison, this officer finds the following aggravating circumstances to apply. This defendant, Ricky Wayne Tison, literally broke in to a Maximum Security Prison in possession of loaded firearms and effected the escape of two dangerous Murderers. From all outward appearances this defendant was the leader and person most responsible for the gathering of the equipment to be used. This equipment being dangerous weapons and ammunition to facilitate the escape of dangerous criminals and to be used in the commission of a heinous crime, in which four (4) individuals lost their lives in the Yuma area, and two (2) individuals lost their lives in Colorado.

The same weapons were used to shoot at the Pinal County Deputies when the Road Block was set up to facilitate their apprehension. This defendant was involved in the armed robbery taking property from the victims prior to their Murders.

This defendant had knowledge that his father, Gary Tison, whom he was going to help escape from the Arizona State Prison, had committed a Murder in a previous escape from that institution.

This defendant appears to show no remorse over the deaths which he was instrumental in the commission of, if not possibly committing himself.

MITIGATING CIRCUMSTANCES

The defendant's age is a mitigating circumstance regarding this situation.

The defendant up to this point did not have a serious past criminal record that can be verified. This defendant did cooperate with officers of the Court to some extent, but this was only done after his capture and then it was not to a full extent. This defendant gave a full statement to the Yuma County Attorney and asked for a Plea Agreement, in which the death penalty would not be asked. The defendant then withdrew this Plea Agreement.

RECOMMENDATION

In the statement given to the Pinal County Deputies on August 11, 1978, by this defendant, Ricky Wayne Tison, there is one sentence in this statement which states, "The whole idea of breaking the old man out of jail was ours. Just pulling a spree."

In Ricky Tison's statement of facts in the Pinal County Presentence Report, he also states in the last paragraph that he certainly will escape should the opportunity arise. He remarked, "My old man always taught me that you never run from anything you attack."

RECOMMENDATION CONT'D:

After a complete review of the entire report, I am torn between recommending the maximum or a lighter sentence. Therefore, no recommendation will be made by this Officer.

Respectfully submitted,

Carl B. Cansler, Jr.
 Carl B. Cansler, Jr.
 Chief Adult Probation Officer
 Superior Court Division Three
 Yuma County, Yuma, Arizona.

DEFENDANT'S STATEMENT:

It should be noted that on January 26, 1979, Ricky Wayne Tison and Raymond Curtis Tison appeared before Judge E.D. McBride in Pinal County, Florence, Arizona. The defendant, Ricky Wayne Tison, and co-defendant, Raymond Curtis Tison, entered into a Plea Agreement pleading guilty to First Degree Murder of John Lyons. Lyons was murdered on August 1, 1978, in Yuma County. The Honorable E.D. McBride set the date of sentencing for February 19, 1979.

As a result of the Plea Agreement, the defendant Ricky Tison gave an oral statement on January 26, 1979, in the presence of Investigator, Tom Brawley, the defendant's attorney, Michael Boers, and Yuma County Attorney, Michael Irwin. The statement is as follows:

Ricky Wayne Tison advised that he, Raymond Tison, Donald Tison, Gary Tison and Randy Greenawalt departed the Arizona State Prison on the morning of July 31, 1978. He stated that they left the Prison in a Ford Galaxy owned by his mother, Dorothy Tison. He advised that they drove to the Pinal County Hospital where they parked the Galaxy and picked up a white Lincoln, four door, bearing New Mexico license plates. Ricky Tison stated that they left the hospital in the Lincoln with Donny Tison driving. He advised that they went on several back roads; that they had planned on using Hunt Highway, but after that he indicated that they had no plane. Ricky Tison advised that they went to the far south side of Phoenix and turned south and went through a small town which he does not recall the name of. He advised they then traveled for a long distance on a dirt road where they eventually came to an old abandoned house. He described the house as a wooden framed house located in the desert. He stated it appeared that fields used to be around the house, however, they had not been cultivated recently. Ricky Tison indicated that they stayed at this house. He thought for two nights, however, he was not sure. He advised that while driving the road, he did see a sign that stated "Entering Maricopa County".

Ricky Tison stated that while at the house they had a flat tire on the Lincoln. They changed the tire and used the spare. He stated that shortly after dark they left the abandoned house and continued down the long dirt road until they came to a highway which, according to Ricky his father called the "Truck Highway". Ricky Tison advised that they turned right onto the highway and went down it for some distance when they had a second flat on the Lincoln. He stated that they stopped the car and cut the thread off the tire and tried to continue driving. He advised that Randy Greenawalt was driving at the time and that they drove a short distance and then determined that they could drive no further on the flat. Ricky Tison advised that at that point they decided that they would flag down a car and take the car from the owners when it stopped.

Ricky Tison advised that at this time, they had the following weapons: Three (3) shotguns which were used at the prison; a .16 automatic with silencer and a .45 Colt. He advised that they put the emergency flashers on the Lincoln. He said that Raymond Tison stayed with the Lincoln to flag down a vehicle. He advised that they all had weapons at that time except for Raymond Tison. He advised that his dad had the 16 gauge shotgun, Randy Greenawalt had a 30 gauge shotgun, Donald Tison had a weapon, but he does not know which weapon and he had a .45 revolver. He advised that Gary Tison and Randy Greenawalt hid on the left side of the road, he and Donny hid on the right side of the road.

Ricky Tison advised that it was after dark at this time and that a car came by. He stated Raymond Tison flagged the car down but it kept going. He stated that a short time later a second car came by and Raymond Tison attempted to flag it down. He advised that the car continued past the Lincoln and then turned around returning to the Lincoln where it again turned and parked directly behind the Lincoln.

DEFENDANT'S STATEMENT CONT'D

He advised that Mr. Lyons and his wife walked up to Raymond Tison. He advised that while they were talking to Raymond Tison, he, Donald Tison, Gary Tison and Randy Greenwalt came up to the side of the Mazda and that they all had their weapons out and pointed at the Mazda.

He stated that Mrs. Lyons left Mr. Lyons and started walking back to the Mazda because she wanted her baby. He advised that at that time his dad, Gary Tison, pointed a shotgun at her. She told Gary Tison she wanted to get her baby and continued to the Mazda. He stated that Teresa Tyson was in the passenger side of the Mazda.

He advised that his father told the Lyons that they wanted the car. He said that he remembered Mrs. Lyons walking up to the Lincoln carrying her baby and he recalled Teresa Tyson getting out of the Mazda. He advised that the Lyons and Teresa Tyson were then placed at gun point in the back of the Lincoln. He said that Raymond Tison and Donald Tison were in the Lincoln and that he, Gary Tison and Randy Greenwalt got in the Mazda. He said that they turned left onto the dirt road which he thinks was a gas line road, a short distance where they stopped. He advised they then parked the Lincoln and the Mazda together and started switching the supplies. They took water, blankets, clothing, gasoline from the Lincoln and put it in the Mazda and they took the Lyons property from the Mazda and put it in the Lincoln. He advised that they searched the Mazda and obtained a .45 automatic and a .38 from it. They also removed the wallets, purses and I.D. from the Mazda. Ricky Tison advised that he found these items and did observe their names from the I.D.'s. He advised that his father told him to dump all of the contents of the purses and the wallet into one purse and they would take them. He further stated that during the time they were switching the items from the two vehicles, the Lyons family and Teresa Tyson were standing in front of the Mazda in the headlights. He advised that at one time Donny was watching them and he does not recall who else may have controlled them while they were in front of the car.

Ricky Tison stated that after unloading the vehicles, his father walked into the desert and then told Donny to back the Lincoln into some trees. He states that Donny backed the Lincoln into the trees and that his dad then stood in front of the Lincoln and shot it several times with a shotgun. Gary Tison then made a statement, "It sure takes a lot to kill a Lincoln." Ricky Tison advised that the Lyons and Teresa Tyson were then taken to the Lincoln. He advised that they all escorted them to the Lincoln and placed them in the car. He advised that during this time, Mr. Lyons asked them not to kill them. He said something that Ricky recalled as "Jesus, don't kill us." He advised that the women were very calm and Teresa Tyson carried a dog with her to the Lincoln.

After they were all in the Lincoln, Ricky Tison stated that his dad told them to go back to the Mazda and get water. He stated that Donny went to the Mazda and he and Raymond stayed at the Lincoln. He said that his dad was very upset and that he yelled back to Donny, "Where is that water?" He stated that right after this he and Raymond went to the Mazda to get water. Ricky Tison stated that he brought water back and his dad took a drink. He said he and Raymond Tison were near the Lincoln, but his dad and Randy Greenwalt walked to the Lincoln. He advised that he saw both Randy Greenwalt and Gary Tison raise their guns and start shooting. He advised that his dad was on the passenger side of the Lincoln and Randy Greenwalt was on the driver's side of the Lincoln. He stated that both were shooting at the same time. He does not recall how many shots were fired. He advised that he observed both Randy Greenwalt and his father shooting at the Lincoln. It was his impression that both the front and back doors to the Lincoln were closed at that time.

DEFENDANT'S STATEMENT CONT'D

He advised that Randy Greenwalt then returned to the Mazda and he could see his father still at the Lincoln shooting. Ricky Tison advised that he did not know if Teresa Tyson got away from the car and he did not know that John Lyons was found outside the car. It was his impression that they were still inside the Lincoln at the time they left the area.

Ricky Tison stated that his father, Gary Tison, later told him that Randy Greenwalt was the one who wanted to shoot the people and he wanted to do it real bad.

Ricky Tison advised that they then got into the Mazda and drove all night. He said they set up camp at Sherwood Forest near Williams. He said that while at this camp, they went through the purse and threw it into a pond. Ricky Tison advised that they were near his uncle's house. He stated that they did not go to the house, but they got near the house and watched it for awhile. He was referring to Larry Tison's house in Sherwood Forest Estates near Williams. He advised that they then went out into a flat where they set up camp. He advised that the pond that they threw the I.D.'s of the Lyons and Teresa Tyson into was a pond that they used to swim in when they were kids. He stated that Donny Tison and Raymond Tison, driving the Mazda went into Williams where they bought groceries and primer paint to paint the Mazda with. He advised that the primer paint was buried at the campsite. He also stated that they spent the night in an old sheep herder's cabin near Sherwood Forest Estates.

Ricky Tison stated that the following day, they took the back roads in the Mazda, crossed the Interstate and went up north to Flagstaff where they made camp. He advised that while they were at the camp, Randy Greenwalt and Donny Tison met with Kathy Ehrmentraut. He advised that he, Donny Tison and Randy Greenwalt went to a small store in the area where they purchased groceries. He said Randy Greenwalt stayed at the Mazda while he and Raymond Tison went into the store. He stated that he never met Kathy Ehrmentraut, that every time Randy Greenwalt left camp, Donny Tison went with him. He advised that while camped near Flagstaff, they obtained a pickup and additional weapons and ammunition from Kathy Ehrmentraut. He advised that after they got the pickup they went a short distance from the campsite and dug holes for the tires and put the Mazda in the holes. They covered the Mazda with trees. He said that they took the seats out of the Mazda and put them in the back of the pickup. He advised that they cut the seat belts out of the Mazda to be used as straps to tie things down with and they also took the radio. They dumped the Mazda seats before they got the van.

Ricky Tison stated that at the time of the escape, it was planned that Randy Greenwalt would go with them because Randy Greenwalt worked in the control room and Gary Tison told them that they needed Randy Greenwalt. Ricky Tison advised that it was he who cut down the shotguns and he made an ejector for the .380. He advised that when they went to the Prison, that morning they dropped Raymond Tison off and thirty minutes later he and Donald Tison came back and hooked the horn. The horn was a signal to let Gary Tison and Randy Greenwalt and Raymond Tison know that they were coming into the control room. He advised that while they stayed at the abandoned house, they could see helicopters flying in the mountains. He stated that the house had a metal shed and an old fence and that he could see some farm houses approximately one mile away. He further advised that while they were on the loose, his father was running things, however, there were no arguments between his father, Randy Greenwalt or anyone else. He advised that Randy Greenwalt was not threatened in anyway and that a week prior to the escape, his father had told him that Randy Greenwalt wanted to escape and also that they needed Randy Greenwalt to help them.

DEFENDANT'S STATEMENT CONT'D

Ricky Tison advised that when they came back into Arizona, their plans were to go to Mexico. He stated that he did not know exactly where they came into Arizona at, but they stayed on the freeway near Phoenix, Arizona, and then went to Surland Air Road. He stated they were unaware of any road blocks until the police lights came on. He said Larry was driving at that time. Randy Greenawalt was sitting up front. He said his dad told Donny to slow down and then his dad said, "Run it." He said his dad had to tell Donny twice to run the road block. He advised that he observed Randy Greenawalt rapid firing a .357 magnum. He said his dad had a rifle at the time they ran the roadblock. He advised that his dad had to reload the rifle and apparently he jammed it. Gary Tison then told Randy Greenawalt to come into the back and Ricky Tison advised that he went to the front. He advised that when he went to the front there was still shooting out the back of the van. He advised that the lights came on the cars at the second roadblock and the cops started shooting. He advised that he ducked down and could not see anymore and they then went off the side of the road. He said after the van stopped, he went out the window and saw the van running from the van. He said that Donny carried a .45 at first, but at the time they were caught, he had a .38; his father had the .45 and Raymond Tison kept the .380.

Ricky Tison stated that the escape had been planned for a long time. He advised that Gary Tison and Joe Tison made a deal for some of Joe's people to break Gary Tison out of prison. In turn, Gary Tison would have some of his people kill a witness who was to testify against Joe Tison in a pending criminal case. Ricky Tison advised that Joe Tison purchased the Lincoln somewhere in New Mexico, that he used a phony name when he purchased the Lincoln and that he was using the Lincoln to run narcotics with until the deal was made between him and Gary Tison. Ricky Tison stated that at that time, several months prior to the escape, Joe Tison gave the Lincoln to the three boys with the understanding that it was to be used for the escape.

Ricky Tison further advised that shortly after receiving the Lincoln from Joe Tison, Joe met with him and Raymond Tison at the Six Pence Hotel in Phoenix where he delivered to them a 16 gauge shotgun and the .38 automatic. Ricky Tison advised that these weapons were given to him and Raymond Tison by Joe Tison for the purpose of using them during the prison escape. He further advised a few days later, he and Raymond met late one night in Florence Junction with Joe Tison and his wife and at that time were given a 12 gauge shotgun and a 20 gauge shotgun. Again, the understanding was that the weapons would be used for the purpose of breaking Gary Tison out of prison.

Ricky Tison stated that right after they received the Lincoln from Joe Tison, they took it to Bob Adams' house in Phoenix and that right after they received the weapons, they also were taken to Adams' house and placed in the Lincoln. He advised that all the camping equipment was bought prior to the escape by Donny Tison. Donny Tison purchased the equipment with money that he received when he was discharged from the Marine Corps. This equipment was also kept in the Lincoln at Bob Adams' house. He advised that the boys received no money from anyone to be used during the escape. He advised that there was only one silencer and he declined to say who made the silencer. He did state, however, that the .380 automatic came from Mr. Wrenshaw in Phoenix. He advised that the radios taken from the prison were buried after they left Williams, Arizona. He advised that he did not know Richard Wilby and did not know the guns were furnished to Joe Tison by Richard Wilby. He advised that he and Raymond Tison told Bob Adams that the day before the escape that they were going to break Gary Tison out of prison. He advised that while they were leave, his dad did not talk much about Adams, but he did make a few phone calls and Ricky Tison thought one of them was to Bob Adams. He stated that no one else was supposed to have been broken out of prison except for Gary Tison and Randy Greenawalt.

DEFENDANT'S STATEMENT CONT'D

He advised that it was not Chuck Whittington or anyone else at Gilbert Pump Company who put the shotguns down, although they saw the shotguns. He advised that he himself put them down. He also advised that after the homicides, they went to Williams to see if Larry Tison would help them however, they made no personal contact with Larry, but it was possible that Gary Tison could have called Larry Tison on the phone. He advised that Randy Greenawalt and Donny Tison obtained a rifle and a .357 from Kathy Ehrmentraut in Flagstaff. He said that Gary Tison and Randy Greenawalt did quite a bit of talking about Ehrmentraut before they arrived in Flagstaff, Ricky Tison, at the request of Tom Brawley drew a very sketchy map showing Sherwood Forest, Larry Tison's house and the pond and the old sheep herder's cabin where they spent the night near Williams.

NAME: <u>James Earl Ray</u> DOB: <u>05-03-1928</u> ADDRESS: <u>402-247-1190</u> CITY: <u>Phoenix, AZ</u> STATE: <u>Arizona</u> ZIP: <u>85001</u>		SEX: <u>Male</u> RACE: <u>White</u> HEIGHT: <u>5' 10"</u> WEIGHT: <u>175 lbs</u> HAIR: <u>Dark</u> EYES: <u>Blue</u> SKIN: <u>Fair</u>	
OCCUPATION: <u>None</u> EDUCATION: <u>High School</u> RELIGION: <u>None</u> POLITICAL: <u>None</u> SOCIAL: <u>None</u>		CURRENT: <u>None</u> PREVIOUS: <u>None</u> REASON: <u>None</u> DATE: <u>None</u>	
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OCCUPATION: <u>None</u> EDUCATION: <u>High School</u> RELIGION: <u>None</u> POLITICAL: <u>None</u> SOCIAL: <u>None</u>		CURRENT: <u>None</u> PREVIOUS: <u>None</u> REASON: <u>None</u> DATE: <u>None</u>	
SPECIAL AGENTS: <u>None</u> EMPLOYMENT: <u>None</u> CLASSIFICATION: <u>None</u> DISCHARGE: <u>None</u> ENTRY DATE: <u>None</u>		MILITARY: <u>None</u> DISCHARGE: <u>None</u> ENTRY DATE: <u>None</u> DISCHARGE DATE: <u>None</u>	
RELATIVES: <u>None</u> ADDRESS: <u>None</u> PHONE NUMBER: <u>None</u>		RELATIVES: <u>None</u> ADDRESS: <u>None</u> PHONE NUMBER: <u>None</u>	
NAME: <u>James Earl Ray</u> DOB: <u>05-03-1928</u> ADDRESS: <u>402-247-1190</u> CITY: <u>Phoenix, AZ</u> STATE: <u>Arizona</u> ZIP: <u>85001</u>		SEX: <u>Male</u> RACE: <u>White</u> HEIGHT: <u>5' 10"</u> WEIGHT: <u>175 lbs</u> HAIR: <u>Dark</u> EYES: <u>Blue</u> SKIN: <u>Fair</u>	
OCCUPATION: <u>None</u> EDUCATION: <u>High School</u> RELIGION: <u>None</u> POLITICAL: <u>None</u> SOCIAL: <u>None</u>		CURRENT: <u>None</u> PREVIOUS: <u>None</u> REASON: <u>None</u> DATE: <u>None</u>	
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OFFENSE VERSION OF OFFENSE: The circumstances surrounding this case are taken from the Yuma County Sheriff's Report 0 9-10796-93; Medical Examiner Reports J70-75/3260, J70-61/3261 and J70-70/3260; numerous FBI Laboratory Reports; Arizona Criminal Investigation Team Reports and Summaries; Pinal County Sheriff's Department Report J70-6500; and the Defendants Statements.

OFFICIAL VERSION OF OFFICE REPORT

These circumstances are as follows: Sometime on or about August 1, 1978, the victim in this case, John Lyons, age 24, Donalda Lyons, his wife, age 21, Christopher Lyons, his son, age 22 months and a niece of John Lyons, Teresa Tyron, age 19, left the Tulsa area on a vacation. They were driving a 1977 Buick automobile belonging to the Lyons family. On August 6, 1978, at approximately 4:00 p.m., an Arizona Fish and Game Officer found the Lyons family shot to death in and around a 1966 Lincoln Continental automobile. A search of the area failed to locate the 19 year old niece, Teresa Tyron. The car and bodies of the Lyons family were found .7 of a mile from Highway 95 at approximately Milepost 88. John Lyons body was found approximately 25 feet to the rear of the car. The Autopsy Report shows he received shotgun wounds in both wrists; shotgun wound to the back of left shoulder, shot at close range; shotgun wound of right abdomen and chest; shotgun wound at close range left rear of skull; and shotgun wound of upper left chest. Cause of death listed as shotgun wounds of head and chest.

The body of Donalda Lyons was found in the backseat of the Lincoln automobile slumped over in the seat holding her 22 month old son, Christopher. The Autopsy Report states she received a close range shotgun wound at the left rear of her skull; a close range shotgun wound of the right chest and a shotgun wound of the left chest. Cause of death listed as a shotgun wound of head and chest.

Body of Christopher Lyons was found in his mother's arms in the back seat of the Lincoln automobile. The Autopsy Report shows he received a shotgun wound to the left side of head. The cause of death is listed as shotgun wound to the head.

At the scene of the murder, officers recovered thirteen (13) spent 16 gauge shotgun shells, five (5) spent 20 gauge shotgun shells and two (2) spent .45 caliber cases.

Through investigative leads the officers found that Gary Tison, Donald Tison, Ricky Tison, Randy Greenwalt and the Defendants, were suspected of committing these murders. Due to the fact that Teresa Tyron's body had not been found, it was thought the five had taken her as hostage.

On August 11, 1978, after Ricky Tison, this Defendant, Raymond Tison and Randy Greenwalt were captured on the Pinal County Road Block. After their capture an interview followed. One of them (unknown to this officer) told where Teresa's body might be located. A search of the area was again conducted and Teresa Tyron's body, along with the Lyons family dog, also dead, were found .3 of a mile from the location of the Lincoln automobile, where the Lyons bodies had been found earlier. It appeared that one was trying to reach Highway 95, as she had travelled in that direction.

The Autopsy Report shows Teresa Tyron received a shotgun wound to the right hip and apparently bled to death. But as the report states because of the extensive decomposition they were unable to determine if there were other wounds. The cause of death is listed as a shotgun wound to the right hip.

On August 11, 1978, the Lyons family automobile, that had been stolen from them, after their murder, was found hidden near Flagstaff, Arizona. On August 17, 1978, the Arizona State Crime Laboratory identified one (1) fingerprint belonging to Ricky Tison, and (1) fingerprint belonging to Donald Tison and one (1) fingerprint belonging to Randy Greenwalt as the stolen car.

OFFICIAL VERSION OF OFFICE REPORT

When the car was recovered it was found that both front seats, and the radio were missing. The car had been repainted on a gray color and the license plates were also missing.

A Tire Chart furnished with the reports, show that the three (3) surviving Defendants in this case, had been involved in the following crimes: On July 30, 1978, the Tisons had effected an escape of their father, Gary, and Randy Greenwalt from the Arizona State Prison with the use of loaded firearms. The above mentioned Defendants, murdered the Lyons family and their niece, Teresa Tyron, as well as robbing them and stealing their automobile. In the State of Colorado, the Defendants murdered and stole the car of James and Margene Judge. The Defendants on August 11, 1978, ran two road blocks in Pinal County, shooting at the deputies who were trying to stop and arrest them, resulting in the gun shot death of one of the co-Defendants, Donald Tison, and the subsequent death of co-Defendants, Gary Tison, whose body was found on August 23, 1978, in the desert area near the road block which he escaped. All of the above crimes occurred within in thirteen (13) days, coming to a conclusion at the time of their arrest on August 11, 1978.

At the time of their arrest, the Defendants and Co-Defendants had the following weapons in their possession:

- 1-Sakata .45 caliber Revolver, serial # 31941 bought by Dorothy Tison on May 20, 1978, from a gun dealer in Casa Grande, Arizona, who was a friend of Ricky Tison.
- 2-1-Smith and Wesson .387 Magnum Revolver serial #816427.
- 3-1-Colt caliber .38 automatic, serial #2237194, which was in the possession of Donald Tison when he was killed at the road block.
- 4-1-Tyco Verde .380 caliber automatic, serial # 109000.
- 5-1-Colt .45 caliber automatic, serial #30215. This weapon was found under the body of Gary Tison at the time of recovery of his body.
- 6-1-S&W .22 caliber Magnum Revolver, serial # 12844, this weapon had an extra cylinder.
- 7-1-Remington Model 70 caliber .348 Magnum Rifle, serial # 29148.
- 8-1-Purshard Arms 12 gauge shotgun, serial #30081, the barrel of this weapon had been sawed off.
- 9-1-Corona 12 gauge shotgun, serial # 07028 whose end barrel sawed off in this weapon.
- 10-1-Browning 12 gauge shotgun, serial #0800094.

From information gathered on the above weapons, the .380 automatic was owned by a business partner of the men that sold Mrs. Tison the .45 caliber revolver. When the man was questioned regarding the gun, as to who he sold it to, he, the man, said he sold the automatic to an unknown subject in a bar, in 1978.

OFFENSES WITHIN OF OFFENSES

This defendant, Raymond Tison, asked a mechanic who worked for the same company as he did, the Gilbert Pump Works, if he would "turn down" a shotgun barrel for him. Mr. Taylor refused. This was before the escape from the Arizona State Prison.

Through the outworned statements, who were present during the escape from the Arizona State Prison, indicated that Gary Tison was armed with a .38 caliber revolver with a silencer attached. That Randy Greenwalt was armed with a shotgun. Donald Tison was armed with a shotgun. Ricky Tison was armed with a shotgun and the defendant, Raymond Tison was armed with a shotgun.

Through information gathered from the FBI report of the thirteen (13) 12 gauge shotgun shells found at the scene of the Lyons Family and Teresa Tyson murder, all but one (1) has been identified as being fired from the Remington 12 gauge shotgun, serial # 851267. Of the five (5) gauge shotgun shells found at the Lyons-Tyson murder scene all five (5) have been identified as being fired from a Remington-Union 20 gauge shotgun serial # 88484. The .45 caliber cases that were found at the scene had been fired from the Remington .45 caliber, serial # 52441.

For a more detailed account of the circumstances involving this case, all reports will be in the possession of the interviewing officer for reference by your Honor upon request.

DEFENDANT'S STATEMENT

Attached to this report you will find a copy of the oral statement given by the defendant, Raymond Tison, on August 11, 1978, on 9:30 a.m., to Pinal County Sheriff's Office after his arrest.

On January 24, 1978, Raymond Curtis Tison, and Ricky Wayne Tison, were going to enter into a Plea Agreement, with County Attorney, Michael Irwin. At the time the Plea Agreement was being discussed, Raymond Tison, gave the following oral statement to Mr. Irwin, Officers of Pinal County, and the Defendant's Attorney, Harry Bagnall was also present. (A copy of that statement will be attached to this report).

On March 9, 1978, this officer went to the Pinal County Jail and conducted an oral interview with this defendant, Raymond Curtis Tison. The interview started at 9:00 a.m., and ended at 11:00 a.m.

The following is a summary of the interview. The defendant was asked if he would give me any statement regarding the incident occurring in Pinal County, in the death of the Lyons Family and Teresa Tyson. The defendant stated that due to the fact he was going to appeal this case, he would rather not make a statement regarding the Lyons-Tyson case.

This officer then asked the defendant if he could hand it to me. The defendant stated, "No, then he would rather not have the statement taped, as he had some bad experiences with tape recordings. At that time this officer turned the tape recorder off. I then went over and detail to explain to him that this tape was merely just to help in the understanding of my report."

DEFENDANT'S STATEMENT (CONT'D):

The defendant asked who would gain information from this report, and it was explained to him the procedures and who had access to the report. He then told me, O.K., that I could turn the tape on. This officer then asked the defendant if he was aware of the maximum charge that he faced, and he stated that he did. The Justice System was then discussed, and what his, defendant's, thoughts were on it. Again, the defendant asked where this report would go. It was explained to him that the County Attorney would get a copy, Judge Reddie would get a copy, and a copy would be filed with the Clerk of the Superior Court. Defendant then asked if this report could be used in his Aggravation Hearing, and I informed him that I thought it could be. I advised Raymond at this time that I did have the statement that he issued at the time of the Plea Agreement, which he refused to go through with. He said that he did not think that the statement at the time of the Plea Agreement could be used in Court due to the fact that the Plea Agreement was not accepted.

CO-DEFENDANTS:

Ricky Wayne Tison, age 30. Found guilty of Four (4) Counts of Murder in the First Degree; Three (3) Counts of Kidnapping; Two (2) Counts of Armed Robbery and One (1) Count of Grand Theft Auto, on February 27, 1979. Defendant is awaiting sentencing on the above charges.

Randy Greenwalt, age 29. He was also found guilty by a jury of the following: Four (4) Counts of Murder in the First Degree; Three (3) Counts of Kidnapping; Two (2) Counts of Armed Robbery and One (1) Count of Grand Theft Auto.

Other charges pending against the above listed co-defendants and the defendant are: Two (2) Counts Murder First Degree; Two (2) Counts of Kidnapping in the First Degree; Two (2) Counts of Conspiracy. These are pending in Del Norte, Rio Grande County, Colorado. They were filed on November 6, 1978, for the Murder of James and Margene Judge. Trial Date unknown.

PRIOR RECORD:

Juvenile: During the interview with the defendant he stated he had no prior Juvenile record, or Juvenile Court action.

When questioned more thoroughly about his Juvenile activities, he made the following statement, "I have always stayed away from things like that because my dad was in prison, and that was one place that I never wanted to be." At this time, I asked the defendant what in the world would make him break his dad out of prison with a loaded gun. He stated, "I thought my dad was being treated unfairly, we had been fighting this through legal means to get my dad out of prison, alot of people were trying to help us get him out." We continued by stating, "They, told my dad, they were never going to let him out, that they did not want him back on the streets, that they were afraid of him."

I asked the defendant who was afraid of him, meaning the dad. Raymond stated, "The authorities. Dad never did go into it too deeply. There wasn't much time out on the street between him and us." I asked how long he had been going to see his dad at the prison. He said quite a few years, but the last two or three years it had been almost every week, and before that it had been twice a month."

ADULT MISDEMEANOR ARRESTS:

The defendant was arrested on one occasion, this being in Casa Grande, Arizona on April 5, 1978. He was originally charged with Burglary, no-force, non-residence. He was questioned regarding this charge. He stated that the case was reduced to a Misdemeanor Petty Theft, and they, meaning he and his brother, Ricky, Plead Guilty in Justice Court. They were given Six (6) months Suspended Sentence and Ordered to clean up Six (6) miles of the highway. Really, it was twelve miles of highway, as it was six miles down one side and six miles down the other side.

Attached you find FBI rap sheet #292-636-P9, reflecting the defendant's arrest on the Misdemeanor charge in Casa Grande, Arizona, and his arrest on the Murder charges in Yuma County, which he is awaiting sentencing on.

Not reflected in this report are arrests and conviction of this defendant in Pinal County on the following: Thirteen (13) Counts of Assault With A Deadly Weapon; One (1) Count of Aiding and Abetting an Escape; One (1) Count of taking Prohibited Articles into The Arizona State Prison; Four (4) Counts of Assault With A Deadly Weapon; One (1) Count of Possession of a Stolen Vehicle; One (1) Count of Count of Fleeing or Attempting to Elude a Pursuing Law Enforcement Vehicle. After being found guilty by a Jury Trial in Pinal County of the above charges, the defendant received the following sentence: Two (2) sentences of Thirty (30) Years to Life to date from August 11, 1978; Four (4) sentences of Four (4) to Five (5) years in the Arizona State Prison to be served consecutively with the Life Sentence.

SOCIAL HISTORY:

The defendant was born on October 31, 1959, in Casa Grande, Arizona. His father being Gary Tison (deceased at the age of 44, also a co-defendant in this case). Defendant stated that his father's educational background was unknown. That his father was still legally married to his mother at the time of his death. When the defendant was asked if his father had any physical problems that he knew of, he stated the only thing wrong was that his father was over weight. Father was a prisoner at the Arizona State Penitentiary, Florence, Arizona.

The defendant's mother was Dorothy Tison, nee, Standford, approximately 38 years of old. She resides at 2221 N. 41st Drive, Phoenix, Arizona. She is a high school graduate, is widowed, and the only physical impairment that she possibly might have would be high blood pressure. The mother works for an insurance firm as a secretary in Phoenix, Arizona.

From this marriage there were three children born. Donald being the eldest child, Ricky the second child, age 20, and the defendant, Raymond, age 19, the third and youngest child.

The defendant was asked who was most responsible for his early upbringing. He stated that his mother was, continuing by stating, his father was in prison for about 11 years. I then asked the defendant how long his father was out of prison, that he can remember. He stated, I can't remember how long he was out of prison, stating, when I was born he was out of prison, and then for a period of time he was home. Defendant stated the first thing that he can remember about his father is that at about the age of 4, visiting him at the State Penitentiary.

SOCIAL HISTORY (CONT'D):

The defendant was asked to give me some information regarding his early home life. He stated, we had clothes and we had cars, we were a close family. The family was pretty stationary, they moved from Casa Grande, Arizona to California for a period of one year and then moved back to Phoenix, Arizona. He said that they lived with their mother, but would spend the Summers in Casa Grande, Arizona with their maternal grandparents, as they liked the town. He said they had friends and they went out, but they mostly stayed at home to keep their mother company.

Defendant was asked what the family's attitudes were regarding his arrest in this case. He stated, mom has mixed feelings, she doesn't like the idea of us being in prison. Dad was in prison for 11 years.

The defendant was asked how he was disciplined during his early years when he did something wrong. He stated a few times I was spanked, stating, but, we really never got into any kind of trouble to speak of, we tried to keep mom happy.

This officer asked the defendant who in the family would be willing to help him, if help was required. He stated, anybody on my mom's side of the family would help. As far as my dad's side of the family, my dad had been away from his family since he was 13 years old. He told us all about his family, and I just don't trust them. Look what Uncle Joe tried to do to us! He was referring to the testimony by his Uncle Joe, who testified in Court as a Prosecution Witness.

MARITAL HISTORY:

The defendant has never been married, has no steady girl friends, and up to his arrest he had no plans for marriage.

PRESENT PHYSICAL AND INTERPERSONAL ENVIRONMENT: This defendant was born in Casa Grande, Arizona, he moved to California for approximately one year at a young age, then moved back to Phoenix. Most of his life has been spent in the State of Arizona. At the present time, the defendant is housed in the Yuma County Jail awaiting sentencing on the charge which he was found guilty of. Prior to that he was in the Arizona State Prison for the conviction of the Pinal County Crimes.

ACADEMIC EDUCATION:

The defendant attended Maryvale High School, Phoenix, Arizona, and completed the 11th grade, this being in 1977. After a period of time he took the GED Exam and received his GED Certificate. He stated that he had plans to continue his education while in prison. The defendant appears to have no problem understanding and communicating in the English Language.

The defendant was asked why he quit school, and he said he just got bored with school, but that later he regretted not finishing school. He said he never realized the value of a diploma until he tried to get a job.

VOCATIONAL EDUCATION:

The defendant stated while in high school he took two vocational training courses, metal shop and mechanics. He stated that he enjoyed both of these courses, and later worked in a self-employed capacity, with his brother, Ricky, repairing automobiles.

RELIGION:

Defendant claims no religion.

INTEREST AND LEISURE TIME ACTIVITIES:

work that requires working with his hands.

Defendant states he likes tinkering with cars and doing

SUBSTANCE USE OR ABUSE:

Alcohol: The defendant stated that he would class himself as a moderate drinker. Usage being two or three times a week. He said before the escape, when he drank he drank Rum and Coca-Cola, but that he also drank beer on occasion.

The defendant was asked if during the escape or after this period. He stated no. Defendant started drinking at the age of 18. He said that this was mostly on Saturday nights, and that he used to have to buy the liquor that they consumed, as he was the oldest looking one of the group that he ran with.

Marijuana: Defendant stated he tried it and used it to some extent, that up to about one year ago he used it about three times a week. Now it is on occasional basis. He started using Marijuana at the age of 16.

Narcotics/Dangerous Drugs: The defendant stated he never used either, that he just never saw a need for that stuff. He was asked if he considered himself as an alcoholic, and he stated no.

PHYSICAL HEALTH:

The defendant is presently being treated for a bad cold by the nurse at the Yuma County Jail. Defendant was asked if he was allergic to any type of medication, and he stated none that he knew of. Defendant was then asked what types of illnesses he has had. He said at the early age of about 4 years, he was in the hospital for one week. He said he developed a rash of some type, but they never did find out what it was caused from. He said he was then treated on two different occasions. The first time being when he was about four years of age he was hit by an auto-mobile, and received a bump on the head. He was treated and released. Then while living in California, he broke his arm, and this was taken care of in the doctors office.

upon his entry to the Arizona State Prison.

MENTAL AND EMOTIONAL HEALTH:

The defendant was asked what he thought of people. He said that he did not consider himself to be prejudiced. He said that as long as people treated him right, that he would treat them right, but stated, "if you mess me up, you will never do it again."

MENTAL AND EMOTIONAL HISTORY CONT'D:

He was asked if he had close friends, or if he was a loner. He said, I don't call people friends unless they are someone very close, they have to understand me and I have to understand them. He said he only considers his family as close friends, and his family on his mother's side. He continued by stating, he knows quite a few people, and they have done things, but they were not close. He stated, "I do not tell people about me until I devaluate them." Stating, he is not paranoid, that he is just being sure. He was then asked what he thinks that people think of him as an individual. He said some like me some don't like me, you can not please everyone.

I asked the defendant who he would consider his closest friend. He stated my brother and my mother. He said that they are the only people I can trust. He said, I never have seen so much back stabbing since I got into this trouble, everyone is coming up with so many different stories.

The defendant was asked if he felt he had any mental or emotional problems. He stated that he did not feel that he had any. He stated that he has never been to a psychiatrist or psychologist with the exception of the evaluation done in January, 1979, that was done by Dr. McDonald. (This Evaluation is attached).

EMPLOYMENT HISTORY:

For the last two years the defendant has been unemployed on a regular basis. He has worked as a mechanic, self-employed, working on cars in his back yard.

For a period of time he worked for The Gilbert Pump Work Company in Phoenix, Arizona, rebuilding pumps. He has also done some roofing work, worked in service stations, as a service station attendant.

The defendant was asked what types of job that he thought he was qualified to do. He stated, I can do mechanic work, roofing, service station attendant, and painting. He then continued by stating, I can do almost anything I set my mind to do.

MILITARY HISTORY:

The defendant has never served in any branch of the United States Armed Services.

FINANCIAL HISTORY:

The defendant has no assets or liabilities at the present time.

SOCIALIZATION

This officer asked the defendant what his future plans were. With this question the defendant, Raymond, went into a long involved statement regarding his feelings, which will give an idea of what this defendant is like. Statement is as follows:

"What do you mean, after 34 years? I figure I will be about 90 or 91. I will have to do 10 calendar years. While I am in Prison I plan on learning as much as I can. They have alot of smart people in Prison, highly educated people. I know a few of them over there. Some of them knew my dad and I can learn from them. I can learn from the school and library. I am not going to try and cram it in the first year. The first year you can't really set down and plan anything, because of the heat and all the propaganda from the newspaper." This Officer asked if he thought this influenced the Prison. He said, "I know it has, you know we just can't plan on anything, because you have to keep your eyes open, and watch yourself. I'm not about to ask for Protective Custody that just makes it worse. If you do that it just makes them think, 'This guy is running scared.' All I can do is just come out and face them." This Officer asked him if he hadn't said that his father had several friends in Prison and if so wouldn't they help him. He said, "I can't be sure they would. Everyone is just waiting to see the outcome of the situation. Everyone wants to know the true story. I think about it you know all the people my dad knew over there, I could run to them and they would help me out, but someone would kill me if they do. That's not the way it's done anyway. They are just going to watch. I might get help as much as they can but you got to stand on your feet over there." This Officer asked him what type of a Prisoner his father was. He said, "You can check the Prison record and find out, as far as I know they never busted him for anything over there." This Officer asked him if his father was well liked. To which he stated, "No, not necessarily. They thought he was bad over there. I found out that at least the administration did. Nobody messed with him. This Officer asked him when he found this out, if it was after the Escape. He said, "Well yes, and the way dad talked." I asked him how much his dad told him about Randy Greenswilt, before the escape. He said, "I only knew Randy that 12 days. He was intelligent and he impressed me but I still didn't know him. I pretty much stayed away from him. I figured my dad knew what he was doing." I asked if he placed all his trust in his dad for this whole deal. He said, "Yeh, you see I have never done anything like this before and neither had my brothers. We didn't know the first going, the first thing about it." I asked him how long they had been working on the escape. He said, "A few months before, I can't liking close to a year. We knew dad wanted to escape and get out, this here escape wasn't planned till the day before." This Officer informed him things sure went smooth for no more planning than that. He said, "We knew about it, but that was when we got drawn into it. It was planned out and dad said he was going to get some help to do it. We waited and waited and nothing happened. We just got tired of waiting, finally we said, 'Boy man, lets get it.' This Officer asked him if all 3 decided at one time to do this. He said, "Each one of us worked it out in our minds. We didn't have anything planned past the escape. You see that's the only part of this that we wanted." I asked him if all the events that transpired after the escape if his dad knew what he was putting him into, or if he thought his dad just didn't give a damn. He said, "No, I don't think he didn't give a damn about us. Him being with us is what got him killed and our brother." This Officer asked him in what way he felt this had caused his dad's death. He said, "I, people together are pretty hard to hide." I told the defendant that I still didn't see how he could blame himself for his dad's death. He said, "While we were on the run law enforcement called my mom and told her they had orders to shoot on sight. They were calling us dangerous. They turned around and asked her to turn us in if we contacted her. I feel at that road block if they had caught him with us they would have killed us all right there. They didn't even know it was us until they found Donnie's I.D."

SOCIALIZATION CONT'D

The defendant then went on to discuss the events of the Road Block, and about the deputies shooting at them until their Van stopped. He denied that anyone in the Van shot at the Deputies until after they ran the first Road Block.

This Officer asked the defendant if he knew at the time the Escape was being planned that his dad or someone could have been killed in the Prison. He said, "We told dad we will do this on one condition and that is no one gets hurt, and he told us, 'Alright.' We had no intention to shoot anybody." He then said, "Who ever said those guns were loaded?" This Officer asked him if they were. He said, "Well, yeh they were, in case something happened." This Officer asked the defendant, in thinking back if he thought he could have shot someone if it had gone sour. He asked, "At the Prison?" I told him, "Yeh." He said, "It would have had to be a very close life or death situation. I could not have cold-bloodedly killed someone. But still I think I would have had some hesitation even then about killing anybody. I just really never thought of it. To kill all those people at the Prison would have been a senseless killing that is something I didn't want."

This Officer asked the defendant if when he started out he thought he needed the weapons because. He said, "Psychologically." He then went on to talk about what the guards had to say about the Escape in the Court Transcripts. He made mention of how one guard had stated how big the barrel of the guns looked. This Officer asked the defendant if he had ever had a gun pointed at him. He said, "The way I look at it 'a, 'Boy just shoot me and get it over with.' See death has never worried me." This Officer asked him if he didn't have any self-preservation instinct to keep on living. He said, "Oh, I have self-preservation, yeh. You know when the time comes. I am not going to worry about it much. The only thing that bothers me about it is my mom is going to be by herself. I am going to give them a fight anyway, at least they will know I am not giving up."

This Officer asked him with the 34 year Prison sentence he is facing, if he thought he would try to escape if he had the opportunity. He said, "Well, I will put it like this, I would try all the legal means first. We tried that with our dad though, and it did do no good. I have also, had my fill of running." I asked him what his thoughts were when he and Rick were accused of Murder. He said, "I didn't like that you know, those Murder charges hanging over us." This Officer told the defendant that in one of the Statements, one of them had made, that they stated, "The only way to stop those Murders was to kill our dad." He said, "We weren't even at the scene you know." This Officer asked him if he had been there, if he was saying that it would be the only way to stop his dad. He said, "Yeh, yeh that would have been it. I couldn't cold-bloodedly kill my dad. That would have meant putting a gun to my dad's head, and that's my father and I respect and love him. I don't think I could have brought myself to do it."

This Officer asked the defendant if, at any time after the Escape, his dad or Randy made any motion that there were going to be any killings. He said, "Yeh, there was always the possibility, like we knew in dad's 1967 escape, he killed that guard. We knew he was in there on a Murder charge. There was a possibility we didn't want to believe it. You know we really never did have a life together on the street, about all we could do was see him on the weekends."

This Officer asked the defendant if he ever considered Randy dangerous. He stated, "I didn't know what he was in there for. After we have been in jail, I have found out quite a bit about him. While we were in Prison for the two weeks I found out alot about him." (Raymond would not ever commit himself to answer this question.) The defendant then said, "He was my dad's man. He, Ricky and Donny had some control over it during the escape. After the escape we lost all control."

SOCIALIZATION CONT'D

I asked him if their control was taken away or if they relinquished it. He said, "It was a little of both. My dad is a natural born leader, now you can check that out at the Pen and find that is true. He was a very intelligent man, lucky and he had respect. He knew everything about it. It was kind of relinquished because no, Don or Ricky had no kind of knowledge at all about this. You know all this running and hiding you know, we knew dad had the experience."

This Officer asked the defendant if what he meant was they were all just taking orders after the escape. He said, "Yes, that's about it." I asked him if from Rudy too or from just his dad. He said, "He was running the show, he wasn't forcing us to do anything." This Officer asked if his dad would have let him leave at anytime. He said, "Yes, as a matter of fact just before we got arrested we were fixing to leave." This Officer asked if he meant he was going to split away from Rudy and his dad. He said, "Yes, what it was you see, running around like that you get real edgy and don't sleep much or nothing, you get tired of looking over your shoulder you wonder what is going to happen next, are you going to get arrested around the curve or down the next block and I got tired. I did not like being on the run. Ricky got tired of it everybody got tired of it. We were just going to split." I asked where he was going to go. He said, "That is something we never decided. The idea to split was not to break up the group of 5, it was us we were tired of running and we were wanting to get away from dad, because we figured something or other was going to happen sooner or later." The defendant continued by saying that there were no arguments or anything and he was getting somewhat paranoid and he just wanted to lay low until the statute of limitations ran out. I asked him why he and Ricky turned down the Plea Agreement. He said, "Judge Faddie was wanting things out of the Plea Agreement that were not originally agreed upon. We were fully informed what all that Plea Agreement involved. Most of the stuff was what Judge Faddie wanted. Some of these things were not appended on. If we got on the stand and testified, he could come along and append on. 'You did that wrong, you did this wrong' and revoke the Plea Agreement say, 'You did that wrong, you did this wrong' and revoke the Plea Agreement and there we would be standing trial." He then continued by saying that he was sure this was hard for me to see and he could see it from my point of view also. He went on to say he just had a gut feeling about the Plea Agreement. He continued by talking about the trial and how it was handled. Now he felt the Conspiracy Prosecution was unfair. He further discussed the witnesses and how some of them lied. He also stated how badly Guido had done the Presentence Report, in Pinal County, and how he had twisted the words around.

Towards the end of the interview the defendant made the following statement. He stated, "I'm not a smart mouth and not a violent person and I'm easy going. I don't consider myself a criminal and all this. Part of the fault might rest with me because of the escape, but still I own other charges." This officer asked Raymond what his feelings were when he realized people were getting hurt in the deal, even though he had said he was not even at the scenes. He said, "I didn't like it, it was all just going against my grain and there when I was really getting uptight about it. I was getting ready to leave there. Just the way listening to those conversations, you know how things were going, things were hot." He further stated when being with his dad made his chances better. He stated, "Then after when I got to looking at it and I said, 'Boy I got to get out of this, I'm in no kind of life for me at all.' This Officer asked him if he was not sorry that they had pulled the escape. He said, "Not at the time we pulled the escape, because we just wanted to get dad out. In a way it's better now that he is dead instead of in that Prison." This Officer asked him if he was saying that his dad and Donny were winners on this deal. He said, "Not Donny, I think dad was in the long run because I had this feeling when it came down too it, he was not going back to that Prison." I asked him if his dad had told him this or if it was just his feeling. He said, "Just a feeling. You would talk to him and put yourself in his position, that's what I always have done."

SOCIALIZATION CONT'D

Try to look at the other point. The other peoples, the other peoples side. My mind was just going in circles and I didn't know what to think. The Prison escape went so smooth it really tipped me. Then everything gets going and you don't know what to think." This Officer asked the defendant if he was ever scared. He said, "Sure plenty of times. Like standing guard at night, you got to see things moving around you think well here they come. I guess paranoia is what you call it. I was down with that, that's when we decided, we got to get out of this because you can't really trust your judgement. That's what screwed me up because I have always tried to make logical decisions, and being the first time at any criminal activity you know it was just going wild. You know stealing two cases of beer was nothing." He further described how he and Ricky took the beer in Casa Grande. For their arrest and the sentence. He then said, "Ricky went down and got a job and he didn't have to walk the 12 miles cleaning up the Highway and he had to end up doing all that by himself. He said he collected 2200 pounds of garbage on that road it took him 3 days. I asked him if he had to spend any time in jail in that charge. He said, "No, this is the first time I have ever been in jail." He then described his arrest at the Road Block and jailing, and Ricky's escape from the Pinal County Jail.

This Officer talked to Mrs. Tigon, and asked her to contact the references and advise them to send in letters to me prior to March 26, 1979.

SUMMARY AND EVALUATION:

I find it somewhat strange that this defendant still denies being in the Tuna area at the time of the Lynn-Tyoon Murders. Even though he is aware that I have in my possession the statements which he and his brother gave at the time of the proposed Plea Agreement, which was later withdrawn.

This defendant was a very soft spoken individual, with a fairly good personality. The beginning of the interview was somewhat strained, but as it progressed he loosened up and began to talk more freely. Due to the fact that the other two co-defendants have elected not to be interviewed I have obtained as much information as I could from this defendant. In the long statement which he gave under Socialization of this Presentence Report, there were some statements made, that this Officer expresses some concern over. These areas are: The beginning of the statement, his early connections as they appear with the prison population. As stated, when he expressed that his father had several close friends still in prison, and their possible help if it was required. Also, throughout this statement, as well as through other information gained through psychological reports, this defendant had a very strong respect and reserve for his father. He still maintains that they only knew 2 days prior to the escape that he and his two brothers were going to take an active part in this. Although, he admits that they had been planning it for some period of time. This Officer had doubts that these three individuals could pull a escape from the Arizona State Prison as smoothly as this one seemed to go, with out considerable pre-planning. The defendant stated that other than the escape there were no plans of what would happen afterwards. With the great lengths that he, and at least his brother went to, to get weapons, gain automobiles, etc. It is difficult to believe that they had no plans, or what they were going to do, after the escape. Also, in his statement at this point, he denies any shooting occurring from the Van at the first on-set of the Road Block, although in one of the statements made, it is understood that they did start shooting prior to the first Road Block.

When I asked the defendant if he ever thought when they were planning the break out of the prison, if someone might possibly get killed in prison.

SUMMARY AND EVALUATION CONT'D

he stated, that they had informed their father that was one condition that they would have to go by, that no one get hurt. I then explained to him that entering a prison with loaded weapons was a pretty "gitty" thing to do. He stated, "We had no intention to shoot anybody." He then continued by stating, "Who ever said those guns were loaded." I then pointedly asked him, "Were they, Raymond?" He said, "Well, yes they were, in case something happened." This Officer asked, "Raymond could you have shot somebody if the whole deal had gone sour?" He asked, "At the Prison." And I said, "Yes." He said, "It would have had to have been a very close life or death situation. I could not cold-bloodedly killed someone, no. Still I think I would have had some hesitation about killing anybody. I just never really thought of it." He continued by stating, "To kill all those people at the prison would have been a senseless killing, that is something I did not want." I asked him, "Well when it started out why did you think you needed weapons?" He stated, "Just strictly psychological."

Further into the interview he made some comment that was by a guard when he looked at the receiving end of one of the shotguns, and told in the Court Transcript how big it looked. I then asked the defendant if he had ever looked down the barrel of a gun. He stated, "The way I look at it is this, 'Key, just shoot me and get it over with.' Gee Death has never worried me." I asked him if he didn't have any self preservation instincts to keep himself alive. He said, "Oh I have self preservation sure, but when the time comes, I am not going to worry about it much, the only thing that bothers me about it is my Mom, she is going to be by herself." He said, "I am going to give them a fight anyway. At least they will know that I am not giving up." This Officer asked the defendant, with the 34 year Prison sentence that he now faces, if he thought that he would ever try to escape. I if he ever had the opportunity. He said, "Well, I will put it like this, I could try all the legal means, first. We tried those with my Dad and they didn't do too much good. I have also had my fall of running." Also, during the statement, I talked to him regarding his father. I then informed him that on one of the statements, one of you said, the only way to stop those murders, meaning the ones of the Lyons Family and Teront Tyson was to kill our dad. He said, we weren't even on the scene you know. I said well if you would have been there are you saying this is the only way that you could have stopped him. He said yes, that would have been it. He then continued by stating, I could not have cold-bloodedly killed my dad, that would have meant putting a gun to my Dad's head and that to my father and I respect and love him. I asked the defendant, after the escape, did you, your father or Randy make any motions that there were going to be any killings. He said yes, there was always a possibility. Like we know that during dad's, 1961 escape he had killed that guard. He knew that he was in there on a murder charge, there was that possibility we didn't want to believe it.

He was questioned as to what his knowledge of Greenwald's past activities. He failed any knowledge of Greenwald's activities or history until after he had been committed to the Arizona State Prison himself to serve a sentence. Also, in the statement he talks about control he, Ricky and Donald had some control of it during the escape. But, after the escape we lost all control. I asked him if that control was taken away from him, or if he just relinquished it. He said, a little of both, you know my dad was a natural born leader. He said you can check that out at the "pen" and find that it is true, he was. He then went on to state that one of the reasons in the control was relinquished to his father is that he had the experience in escaping and they felt if any of them were going to survive they were going to have to stay with him. He acknowledged that they were not forced to stay with the father and Greenwald, after the escape. Also, I asked the defendant what his feeling were when he realized that people were getting killed. He said I did not like it, it was just going against my grain, and that is why I was really getting up tight about it, I was getting ready to leave.

SUMMARY AND EVALUATION CONT'D

He said just by listening to the newscasts you knew how things were going, and that things were hot. He said however, they felt by being with their father that the chances of escaping were better.

It was noted during the entire interview that at no time did this defendant, ever really express any remorse towards what had happened to any of the victims in this crime. Perhaps this is due to the fact that he refuses to admit that he was at the scene of this crime. He does show some remorse over the death of his brother, Dennis, and a certain amount of relief to the effect that there were not killings done at the prison, as he stated, it would be so senseless to kill all of those people. The defendant constantly implied and stated that he is not a violent person and he does not think that he could kill anyone unless it was a close life or death situation. This Officer cannot understand how this defendant could be a witness to the Lyons-Tyson murder, which there is no doubt in my mind he was a witness to this, and if as he stated is an opposed to killing, how he could not show some remorse for this family. However, as you read through this statement, there are other areas where he shows strong and harsh feelings regarding to other individuals even to death itself, where he is involved. I find it somewhat strange that this defendant would not admit to being in the Yuma County when this crime was committed, although all during his statement, he keeps referring to the 12 days that he was with his father, and how readily he admitted that the guns were loaded when he went into the Prison, after stating that no one can prove that the guns were loaded.

AGGRAVATING CIRCUMSTANCES:

After reviewing this report and statements made by this defendant Raymond Curtis Tisson, this Officer finds the following Aggravating Circumstances: This defendant, Raymond Curtis Tisson, literally broke into a Maximum Security Prison in possession of 1-1/2 firearms and effected the escape of two dangerous murderers, the father being known to this defendant as a murderer. This defendant along with his brothers, appeared to be the main instigators in locating, purchasing and securing automobiles, dangerous weapons and ammunition to facilitate the escape of dangerous criminals, and to be used in the commission of a heinous crime where four individuals lost their lives in Yuma County. Also, these weapons were used in the commission of a crime where two individuals lost their lives in Colorado. The same weapons were used to shoot at the Pinal County Deputies when the Road Blocks were set up to facilitate their apprehension. The same weapons were also used to commit an Armed Robbery on the victim prior to their murders. This defendant also had knowledge that his father, Gary Tisson, who he helped escape from the Arizona State Prison, had previously escaped from this institution and in the commission of that escape murdered a prison guard.

MITIGATING CIRCUMSTANCES:

This defendant's age is definitely a mitigating circumstance. The defendant up to the escape had no serious criminal record to speak of. The defendant did cooperate with officers of the Court and officers investigating the cases to some extent. Although, this was only done after his capture. The defendant did cooperate with this interviewing Officer, at least he did talk to me, and gave me his side of the incident, not necessarily the situation involving the Lyons and Tyson girl, but he did give me a good insight into his background, and many of his thoughts and philosophies.

TISON, Raymond Curtis

Page Sixteen

RECOMMENDATION

It is surprising how similar this defendant's statement is, with the statement that his brother, Ricky Tison, gave to the Pinal County Probation Officer. This defendant admits that the whole idea of breaking the father, Gary Tison, out of the Arizona State Penitentiary, was all an individual situation. It appears that this defendant at no time was concerned as far as co-defendants, trying to get him to involve himself. Again, this defendant stated that at any time he could have left the group and would not have received no repercussions from this move.

The defendant admits that he knew that there possibly could have been killings involved after the escape, due to the fact that he knew that his father was in for killing of a prison guard.

This Officer feels that this defendant did not actively participate in the murder of the Louis family and Teresa Tison, except he drove them to the scene. As far as I can determine he did everything but point the gun and pull the trigger.

After a complete review of the entire report, I am now between recommending the easiest or lighter sentence. Therefore, my recommendation will be made by this Officer.

Respectfully submitted,

Carl B. Cavaler, Jr.
Carl B. Cavaler, Jr.
Chief Adult Probation Officer
Superior Court Division Three
Yuma County, Yuma, Arizona

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA

STATE OF ARIZONA,

Plaintiff,

vs.

NO. 9299

RICKY WAYNE TISON,

Defendant.

Yuma, Arizona

BEFORE:

THE HONORABLE DOUGLAS W. FIDONE
Judge of the Superior Court
Division Three, Yuma, Arizona.

VOLUME ONE

EXHIBIT 9

SUPERIOR COURT
YUMA, ARIZONA

February 20, 1979
9:30 a.m.

MOTIONS IN CHAMBERS

APPEARANCES:

MICHAEL IRWIN, Pima County
Attorney, For the State.

MICHAEL DEERS, Attorney at Law,
Casa Grande, Arizona, For
Defendant Ricky Tison.

HARRY BACHALL, Attorney at Law,
Coolidge, Arizona, For
Defendant Raymond Tison.

THE COURT: Let the record
show we are convened in chambers with counsel. Mr. Deers,
you had various motions you wanted to urge. This is the
time set for them.

MR. DEERS: Most of them are
already before the Court, Your Honor. I filed a written
motion regarding the death penalty and a motion regarding
restriction of the questions to the prospective jurors to
avoid asking them about whether they believed in the death
penalty. I presume the Court has had time to review those
and I also made a written motion for the appointment of
a forensic psychologist to assist in the jury selection.
I have nothing to add orally to those motions that I haven't
written down.

THE COURT: All right.

MR. DEERS: We have several
more that are either already before the Court or I advised
over the phone to you last week.

THE COURT: Mr. Irwin, I know,

Rick had come over and we started talking. And he just
seemed like a fellow, a young fellow that was curious in
gun smithing and gun working and stuff and a pretty nice
fellow in general.

Q. How often did he come over after you met him?

A. Numerous occasions. It was nothing real
pronounced at first or anything.

Q. Are you able to estimate the frequency with which
he came after you first met him?

A. Oh, maybe about once a month up towards, until a
few months ago.

Q. What happened then?

A. Then they - - he seemed to come over a lot more,
mostly on the weekends. As a matter of fact just about all
the times on the weekend.

Q. You indicated that you had some discussions with
him about guns, is that correct?

A. Yes, sir.

Q. Did you ever discuss with him a particular gun,
a Dakota .45?

A. Yes, sir.

Q. When do you first recall discussing that weapon
with him?

A. It was around May.

Q. And what year was that, Mr. Whittington?

A. Last year.

Q. What were your discussions with him about this
particular weapon?

1 A. He seemed interested in purchasing it.
 2 Q. At that time were you selling guns?
 3 A. Yes, sir.
 4 Q. Would you describe the gun, please?
 5 A. It's a .45 calibre long Colt single action Frontier
 6 model.
 7 Q. Did your discussions lead to a sale?
 8 A. Yes.
 9 Q. When did that occur?
 10 A. About a month later.
 11 Q. Would you describe how the sale occurred, please?
 12 A. Well, as a gunsmith I couldn't legally sell it
 13 to Ricky because he was under age. He says, "No problem."
 14 So he come back down later, a weekend or so, yeah, it was
 15 about a week or so later and he had saved his money up and
 16 I had to sell it to his mother and she filled out the form
 17 and all the proper papers for it.
 18 Q. What is the legal age to sell a gun to a person?
 19 A. A handgun is 21, a shotgun is 18.
 20 Q. Do you recall how much was paid for this weapon?
 21 A. It was about \$165. It went also with a gun belt.
 22 Q. Is there anything distinctive that you would be
 23 able to recognize about the weapon which you sold?
 24 A. Just the serial number.
 25 Q. How is it that you would be familiar with the
 26 serial number?
 27 A. I have got it recorded because I have almost the
 28 identical mate to it. It's consecutively numbered. Mine

SUPERIOR COURT
YUMA, ARIZONA

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 2 IN AND FOR THE COUNTY OF YUMA

3 STATE OF ARIZONA,)
 4)

5 Plaintiff,)
 6)

7 vs.)

NO. 9299

8 RICKY WAYNE YISOW,)
 9)

10 Defendant.)
 11)

12 Yuma, Arizona

13 BEFORE:

THE HONORABLE DOUGLAS W. KEDDIE
Judge of the Superior Court
Division Three, Yuma, Arizona.

14
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16
17 VOLUME TWO

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26
27 EXHIBIT 6
28

SUPERIOR COURT
YUMA, ARIZONA

February 21, 1979
9:30 a.m.

TRIAL

APPEARANCES:

MICHAEL IRWIN, Yuma County
Attorney, and JOSE DE LA VARA,
Yuma Deputy County Attorney,
For the State.

MICHAEL BEERS, Attorney at Law,
Casa Grande, Arizona, For
Defendant Ricky Tison.

THE COURT: Let the record
show the presence of counsel, the defendant, and the jury.
You may continue, Mr. Irwin.

MR. IRWIN: Thank you, Your
Honor. The State calls as its next witness Ed Barry.

EDWARD BARRY

having been duly sworn to tell the truth, the whole truth,
and nothing but the truth, testified on his oath as follows:

DIRECT EXAMINATION

BY MR. IRWIN:

Q. Would you state your name, please?

A. Edward Barry.

Q. What is your occupation, Mr. Barry?

A. I am a correctional service officer for the Arizona
State Department of Corrections.

Q. And where do you work?

A. I am currently assigned to the Arizona State Prison,
the north unit, medium security.

SUPERIOR COURT
YUMA, ARIZONA

A. Again you have the numbers, excuse me, the letters
which were taken from the original report. The orange
square here indicates that this was the Lincoln Continental
vehicle. The numbers in blue indicate the location of the
.16 gauge shotgun shells found at the scene. The numbers
in the orange indicate the .20 gauge shells found at the
scene.

Q. Larry, the numbers which are indicated by those
shotgun shells, are those the same numbers which you
assigned to them?

A. Yes, I did.

Q. Larry, did you pick up any other expended shells
at this area?

A. Two .45 long Colt shells were found in the gas line
road between the turn around point here and approximately
where the vehicle was backed off in the desert. The Lincoln
Continental was backed into the desert.

Q. Where were these shells at?

A. They were laying right in the roadway.

Q. Did you examine these shells?

A. Yes, I did.

Q. What did you notice about their appearance?

A. They appeared to be fairly well tarnished. They
were, I would consider them old brass. They were tarnished
to some extent. I couldn't detect any odor of fresh powder
or anything like that from them.

Q. What did you do with these cartridges when you
found them?

SUPERIOR COURT
YUMA, ARIZONA

OPPOSITION BRIEF

ORIGINAL

Supreme Court, U.S.
FILED

FEB 21 1985

ALEXANDER L. STEVENS
CLERK

NO. 84-6075

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1984

RICKY WAYNE TISON AND RAYMOND CURTIS TISON,

Petitioners,

-vs-

STATE OF ARIZONA,

Respondent.

ON WRIT OF CERTIORARI TO THE ARIZONA SUPREME COURT

RESPONSE TO JOINT PETITION FOR

WRITS OF CERTIORARI

ROBERT R. CORBIN
Attorney General of
the State of Arizona

WILLIAM J. SCHAFER III
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Criminal Division

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Attorneys for RESPONDENT

QUESTION PRESENTED

Having determined, on the basis of petitioners' knowledge and conduct, that petitioners could anticipate the use of lethal force, did the Arizona Supreme Court violate Enmund v. Florida when it affirmed petitioners' death sentences?

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28	(N.M. 1983)	6
29	State v. Ruiz	
30	94 Ill.2d 245	
31	447 N.E.2d 148 (1982)	14
32	State v. Stokes	
33	308 N.C. 634	
34	304 S.E.2d 184 (1983)	6
35	State v. Tison (Ricky)	
36	129 Ariz. 526	
37	633 P.2d 335 (1981)	10

AUTHORITIES

28	U.S.C.	
29	§ 1257(3)	4
30	§ 2254	5

1	CONSTITUTIONAL PROVISIONS INVOLVED
2	THE EIGHTH AMENDMENT TO THE UNITED STATES
3	CONSTITUTION:
4	EXCESSIVE BAIL SHALL NOT BE REQUIRED, NOR
5	EXCESSIVE FINES IMPOSED, NOR CRUEL AND UNUSUAL
6	PUNISHMENTS INFLICTED.
7	THE FOURTEENTH AMENDMENT TO THE UNITED STATES
8	CONSTITUTION, IN PERTINENT PART:
9	[N]OR SHALL ANY STATE DEPRIVE ANY PERSON OF
10	LIFE, LIBERTY, OR PROPERTY, WITHOUT DUE PROCESS
11	OF LAW. . . .

STATEMENT OF THE CASE

Respondent is in general agreement with the Statement of Facts provided by petitioners. (See Petition for Writ of Certiorari, pages 10-13.) There is no dispute regarding the history of petitioners' cases from February and March, 1979, when they were tried, to the present time. However, because of the nature of the question presented by petitioners, it is critical that this Court be aware of the precise roles played by petitioners in the prison break as well as the kidnapping, robbing, and killing of the four victims. Therefore, respondent submits the following additions to and modifications of the factual statement provided by petitioners.

While it is true that the prison break did not occur until July 30, 1978, one must go further back in time in order to get a complete picture. According to Ricky Tison, he, Raymond Tison, and Gary Tison began planning the escape "a couple of years" before it actually happened. (Exhibit 1, page 5.) The escape plan was finalized approximately 1 week ahead of time. (Id. at 8.) Ricky personally "cut down" all of the guns that were used in the prison break. (Id. at 11.) According to Raymond Tison, petitioners were aware, well in advance of the actual escape, that Randy Greenawalt would play a role in the escape. (Exhibit 2, page 6.) Petitioners were assisted in the preparation for the escape by their uncle, Joe Tyson, who provided a vehicle (the Lincoln) and the guns. (Id. at 6-7.)

Both petitioners played critical roles in the actual escape. In fact, it was Ricky Tison who initiated the escape by pointing a shotgun at a prison guard. (Exhibit 1, page 16.) After petitioners, Donny Tison, Gary Tison,

and Randy Greenawalt got outside the prison, they drove a car from the prison to a nearby hospital, where the Lincoln was waiting. They made their getaway from Florence in the Lincoln. (Id. at 17.)

All went well until the evening of August 1, 1978, when a tire blew. At that point, the five men decided that they would take the next car that came by. While it was Gary Tison who suggested that course of action, everyone else agreed with the plan. (Id. at 24-25.) Raymond Tison flagged down John Lyons' Mazda while the other four men hid behind an embankment near the side of the road. (Id. at 26-27.) Accompanying Lyons were his wife, Donelda, his 15-year-old niece, Theresa, and the Lyons' 22-month-old son, Christopher. After Lyons stopped his car in an apparent effort to assist Raymond Tison, the other four men came out of hiding and pointed guns at the victims. The victims were herded into the back seat of the Lincoln, which Raymond Tison then drove some distance down a side road. Ricky Tison, Gary Tison, and Randy Greenawalt got into the Mazda and followed the Lincoln. The vehicles were then parked trunk-to-trunk. (Id. at 29-31.) The victims were taken out of the Lincoln. While Donny Tison kept an eye on the victims, petitioners took the victims' property out of the Mazda and went through it. They then transferred the property that had been inside the Mazda to the Lincoln and vice versa. (Id. at 31-33.) Gary Tison then told Donny Tison to move the Lincoln. After it had been moved, Gary Tison rendered it inoperable by firing several bullets into the engine. At that time, the men escorted the four victims back into the Lincoln. (Id. at 34.)

1 Ricky Tison heard John Lyons beg for his life and the
2 lives of the others; he heard Gary Tison tell Lyons that
3 he (Gary) was "thinking about it." (Id. at 35, lines
4 8-13.) Gary Tison then told Donny Tison to get some water
5 for the victims; when Donny could not find a container,
6 petitioners went to help him. After petitioners came back
7 with the water, Gary Tison told them to give "him"
8 (apparently John Lyons) a drink. (Id. at 36, line 9.)
9 Although it was dark, Ricky Tison could distinguish one
10 person from another. Soon after John Lyons was given a
11 drink, Gary Tison and Randy Greenawalt moved behind the
12 Lincoln, raised their shotguns, and fired numerous rounds
13 into the Lincoln. (Id. at 36-41.) This, of course,
14 resulted in the deaths of the four victims. The five men
15 then got into the Mazda and headed toward Flagstaff,
16 Arizona. Investigators found the Lincoln and the dead
17 victims on August 6, 1978. On August 11, 1978, Donny
18 Tison was killed after the gang ran a roadblock and
19 engaged in a gun battle with police officers near Casa
20 Grande, Arizona. Gary Tison escaped from the immediate
21 area where the battle occurred, but a later search of the
22 surrounding desert area resulted in the discovery of his
23 body. Petitioners and Randy Greenawalt were captured
24 within a short time after they ran from their vehicle.

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REASONS FOR DENYING THE WRIT

I.

THIS COURT SHOULD DENY THE PETITION FOR WRIT OF CERTIORARI BECAUSE, AS A REVIEW OF THE FACTS AND APPLICABLE LEGAL PRINCIPLES DEMONSTRATES, PETITIONERS CLEARLY ANTICIPATED AND CONTEMPLATED THAT LETHAL FORCE WOULD OR MIGHT BE USED BY THE CONVICTED MURDERERS THAT THEY UNLEASHED UPON SOCIETY.

A. This case fails to present any unique element that should cause this Court to exercise its discretionary power to grant a writ of certiorari.

Petitioners request this Court to issue a writ of certiorari. This Court has jurisdiction to do so under 28 U.S.C. § 1257(3), but, as this Court has held, the issuance of the writ is discretionary. Hammerstein v. Superior Court, 341 U.S. 491, 492, 71 S.Ct. 820, 821, 95 L.Ed.2d 1135, 1137 (1951). Typically, this Court will grant certiorari in three situations: (1) the case presents an issue of national importance that this Court needs to settle; (2) there is a conflict between the opinions in different circuits; or (3) the petitioner may be entitled to relief and he will not be able to obtain that relief in any other court. Petitioners' claim fails on all three points.

This case does not present any novel issue of national importance. This petition presents nothing more than an application of the principles articulated by this Court in Enmund v. Florida, 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982), to the facts of this case, and does not afford this Court an opportunity to resolve any issues left open by Enmund. A decision in this case would not measurably add to the body of case law used by the lower courts.

This case will not resolve any conflict in the circuits. A review of the federal cases dealing with the Enmund issue shows that there are no conflicts to resolve.

1 Finally, this Court is not the only forum in which
2 petitioners might obtain relief. Petitioners have yet to
3 seek relief pursuant to 28 U.S.C. § 2254. If they are
4 entitled to relief, they should seek it pursuant to that
5 statute.

6 B. Petitioners' death penalties were not imposed in
7 violation of Enmund v. Florida.

8 Petitioners contend that their death sentences were
9 imposed in violation of Enmund v. Florida, supra. A review
10 of Enmund is critical to an evaluation of petitioners'
11 claim. Earl Enmund, Sampson Armstrong, and Jeanette
12 Armstrong were all convicted in the April 1, 1975, shooting
13 death of an elderly couple. After being convicted of two
14 counts of first-degree murder and one count of robbery,
15 Enmund was sentenced to death. In affirming Enmund's
16 convictions and sentences, the Florida Supreme Court noted
17 that there was "no direct evidence at trial that Earl
18 Enmund was present at the back door of the Kersey home when
19 the plan to rob the elderly couple led to their being
20 murdered." Enmund v. State, 399 So.2d 1362, 1370 (Fla.
21 1981). Thus, as this Court stated in its opinion, Enmund
22 was nothing more than a getaway driver. 458 U.S. at
23 786-87, 102 S.Ct. at 3371, 73 L.Ed.2d at 1145 n.2.

24 Petitioners contend that Enmund stands for the
25 proposition that the death penalty cannot be imposed upon
26 either of them because the evidence does not show that they
27 killed, attempted to kill, or intended to kill their
28 victims. Respondent urges that petitioners' interpretation
29 of Enmund is unduly narrow. A review of the Enmund opinion
30 demonstrates that the death penalty can be imposed not only
31 upon one who killed, attempted to kill, or intended to
32 kill, but also one who (1) intended that lethal force be
used (458 U.S. at 797, 102 S.Ct. at 3376-77, 73 L.Ed.2d at

1 1151). (2) anticipated that lethal force would or might be
2 used (458 U.S. at 788, 102 S.Ct. at 3372, 73 L.Ed.2d at
3 1146, emphasis added), or (3) contemplated that life would
4 be taken or that lethal force would be employed by others
5 (458 U.S. at 799, 801, 102 S.Ct. at 3377, 3379, 73 L.Ed.2d
6 at 1151, 1154). A survey of post-Enmund cases demonstrates
7 that courts frequently hold that Enmund does not limit the
8 death penalty to cases where the defendant kills, attempts
9 to kill, or intends to kill. See, e.g., Ross v. Hopper, 716
10 F.2d 1528 (11th Cir. 1983); State v. Calhoun, 468 A.2d 45
11 (Md. 1983); Meanes v. State, 668 S.W.2d 366 (Tx.Crim.App.,
12 Sept. 14, 1983); State v. Stokes, 308 N.C. 634, 304 S.E.2d
13 184 (1983); People v. Garcia, 97 Ill.2d 58, 454 N.E.2d 274
14 (1983); People v. Davis, 95 Ill.2d 1, 447 N.E.2d 353 (1983);
15 State v. Garcia, 664 P.2d 969 (N.M.), cert. denied, 103
16 S.Ct. 2464 (1983); Ex Parte Raines, 429 So.2d 1111 (Ala.
17 1982); State v. Copeland, 278 S.Ct. 572, 300 S.E.2d 63
18 (1982), cert. denied, 103 S.Ct. 1802 (1983); Smith v. State,
19 414 So.2d 716 (Fla. 1982); Ruffin v. State, 420 So.2d 591
20 (Fla. 1982); Johnson v. Zant, 249 Ga. 812, 295 S.E.2d 63
21 (1982). The Arizona Supreme Court has held that the phrase
22 "intended to kill," as that phrase is used in Enmund,
23 "encompasses the situation where a defendant contemplated,
24 anticipated, or intended that lethal force would or might be
25 taken in accomplishing the underlying felony." State v.
26 Emery, ___ Ariz. ___, ___, 668 P.2d 175, 180 (1984)
27 (citations omitted).

28 Petitioners' protestations notwithstanding, it is
29 perfectly clear that there are critical factual distinctions
30 between Enmund and the case at bar. Neither petitioner was
31 a mere "getaway driver." Both knew that Gary Tison had
32 tried to escape from the Arizona State Prison in 1967, and

1 that he had killed a prison guard during that attempt.
2 (Exhibit 3, page 8; Exhibit 4, pages 12, 15.) Both
3 petitioners were intimately involved in the prison break;
4 without their assistance, the escape plan could not and
5 would not have succeeded. Neither petitioner was merely
6 "present" when the victims were abducted: Raymond flagged
7 down the victims and Ricky held a gun on them. Raymond
8 drove the Lincoln off the highway onto a dirt road. After
9 both the Lincoln and the Mazda came to a halt, petitioners
10 went through the victims' property and put it in the Mazda.
11 They then transferred other items between the two vehicles.
12 Any statement, implied or otherwise, to the effect that
13 petitioners were getting water when the fatal shots were
14 fired is contradicted by Ricky Tison, who admitted that he
15 and Raymond returned to the area where the Lincoln was
16 parked before the shots rang out. While it has never been
17 proved that either petitioner fired any of the fatal shots,
18 the evidence suggests that Ricky Tison's weapon was used to
19 fire two rounds near the Lincoln. (Exhibits 5 and 6.)

20 The case before this Court is not the typical
21 convenience store holdup. In considering the petition, this
22 Court need not concern itself with the plight of the getaway
23 driver who may or may not be aware of the intentions of the
24 "triggerman" who ultimately kills the victim. In concluding
25 that the death penalty is not a viable deterrent to the
26 underlying felony in felony-murder situations, this Court
27 made the following statement:

28 It would be very different if the
29 likelihood of a killing in the course of
30 a robbery were so substantial that one
31 should share the blame for the killing
32 if he somehow participated in the
felony.

1 Enmund v. Florida, supra, 458 U.S. at 799, 102 S.Ct. at
2 3378, 73 L.Ed.2d at 1153. The extent of petitioners'
3 involvement in this fatal course of events is so great that
4 they should share the blame. They deserve the ultimate
5 penalty.

6 In Ex parte Ritter, 375 So.2d 270, 275 (Ala. 1979), the
7 court, viewing the concept of accomplice liability as a
8 continuum, made the following observation:

9 Ritter stands at the most culpable end
10 of the spectrum of accomplice
11 liability. He is closer to an
12 individual who fires a non-fatal shot in
13 a killing rather than one who waits
14 outside as a lookout.

15 Like Ritter, petitioners stand at the "most culpable end" of
16 the continuum. The record demonstrates that petitioners helped
17 plan and carry out the prison break. They provided the weapons
18 that were used to hold guards at bay during the break and to
19 murder a defenseless family less than 72 hours later. Raymond
20 Tison flagged down the Mazda; after John Lyons stopped in order
21 to lend him a hand, Ricky Tison and the other men came out of
22 hiding and seized upon the victims, holding several guns on
23 them as though they presented a threat. Petitioners kidnapped
24 and robbed the victims, and then herded them into the Lincoln
25 after Gary Tison had rendered it inoperable. Even if it is
26 assumed that neither petitioner fired any shots at the victims,
27 they were at most a short distance away when numerous shots
28 were fired into the Lincoln. It cannot be seriously maintained
29 that petitioners did not anticipate or contemplate that lethal
30 force would or might be employed.

31 * * *

32 * * *

* * *

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1 C. The Arizona Supreme Court did not evaluate
2 petitioners' conduct on the basis of the doctrine
3 of "foreseeability," but on the basis of those very
4 standards articulated by this Court in Enmund.

5 At two points in their memorandum, petitioners discuss
6 the issue of "foreseeability" and conclude that it is
7 constitutionally impermissible to utilize such a standard in
8 death penalty cases. (See Petition for Writ of Certiorari,
9 page 17, et seq., page 22, et seq.) A review of the Arizona
10 Supreme Court's opinions in State v. Ricky Wayne Tison (No.
11 4612-2-PC, decided Oct. 18, 1984; attached to Petition for
12 Writ of Certiorari as Exhibit A), and State v. Raymond Curtis
13 Tison (No. 4624-2-PC, decided Oct. 18, 1984; attached to
14 Petition for Writ of Certiorari as Exhibit B), demonstrates
15 that what petitioners pejoratively refer to as the "tort
16 doctrine of foreseeability" is not the touchstone of either
17 majority opinion. Indeed, those portions of the opinions
18 that deal with the Enmund issue are comprised of nothing more
19 than a review of the relevant facts and an evaluation of
20 those facts in light of this Court's pronouncements in
21 Enmund. See State v. Ricky Wayne Tison, supra, pages 2-5;
22 State v. Raymond Curtis Tison, supra, pages 2-5. It appears
23 that petitioners have seized upon certain language utilized
24 by Justice Feldman in his dissent; however, contrary to the
25 dissent and to petitioners' argument, the concept of
26 "foreseeability" was not utilized by the Arizona Supreme
27 Court. Neither Enmund nor either of the most recent Tison
28 opinions holds that "tort foreseeability" is the test.

29 D. The Arizona Supreme Court did not violate the
30 principle that punishment must be determined on the
31 basis of the defendant's personal culpability in
32 connection with the crimes for which he is to be
33 punished.

34 Petitioners then argue that the Arizona Supreme Court
35 violated Enmund when it affirmed their death sentences in
36 spite of the "fact" that the death penalty is

1 disproportionate to each petitioner's personal
2 culpability. Respondent does not urge that it is proper
3 for a sentencing authority to impose a sentence that is out
4 of proportion to the individual defendant's degree of
5 culpability. See, e.g., Enmund v. Florida, supra, 458 U.S.
6 at 798, 102 S.Ct. at 3377, 73 L.Ed.2d at 1152. However,
7 once again, a review of the Arizona Supreme Court's
8 opinions demonstrates that the court did not affirm the
9 imposition of disproportionate sentences. Under Enmund,
10 petitioners' conduct is not the only key issue; another
11 element that is critical to the analysis is their
12 knowledge. Because of the numerous factual distinctions
13 involved, the fact that Enmund's death sentence was found
14 to be "disproportionate" to the role he played in the
15 Kersey murders is largely immaterial to the question
16 presented by petitioners. Given the standards articulated
17 by this Court in Enmund, the Arizona Supreme Court did not
18 violate the concept of "disproportionality" as that concept
19 is utilized in Enmund.

20 E. In affirming petitioners' death sentences, the
21 Arizona Supreme Court did not alter, much less
22 contradict, the findings made and conclusions drawn
23 on petitioners' first appeals.

24 Petitioners urge this Court to grant review on the
25 basis of their allegation that the Arizona Supreme Court,
26 in its latest opinions, ignored its earlier
27 "interpretation" of the record. Petitioners ground this
28 claim in the following language, which is taken from the
29 first opinion in State v. Tison (Ricky), 129 Ariz. 526, 633
30 P.2d 335 (1981):

31 The record establishes that both
32 Ricky and Raymond Tison were present
when the homicides took place and that
they occurred as part of and in the
course of the escape and continuous
attempt to prevent recapture. The
deaths would not have occurred but for

1 their assistance. That they did not
2 specifically intend that the Lyonses and
3 Theresa Tyson die, that they did not
4 plot in advance that these homicides
5 would take place, or that they did not
6 actually pull the triggers on the guns
7 which inflicted the fatal wounds is of
8 little significance. Ricky and Raymond
9 Tyson associated themselves with others
10 who were willing to and had in the past
11 committed savage, homicidal acts. They
12 were palpably indifferent to the
13 consequences of their lawless conduct.
14 They will not be relieved of the
15 punishment the law exacts where the
16 criminal association was formed,
17 supported and carried out irrespective
18 of the probable consequences that human
19 life would be taken to ensure the
20 success of the criminal enterprise. We
21 assent to the retributive principle of
22 justice which demands that persons be
23 punished in proportion to their personal
24 involvement in the crime, focusing the
25 inquiry on the harm which may fairly be
26 attributed to a participant's conduct.
27 See U.S. Const. amend. VIII. This is not
28 a case of minimal assistance. Compare
29 Lockett v. Ohio, 438 U.S. 586, 98 S.Ct.
30 2954, 57 L.Ed.2d 973 (1978).

16 129 Ariz. at 545, 633 P.2d at 354 (emphasis added). Again,
17 petitioners base their argument on certain language from
18 the dissent to the latest opinions. However, it is most
19 apparent that the Arizona Supreme Court did not reinterpret
20 the record when these cases came before that court for the
21 second time. At no time has that court held that either
22 petitioner actually killed any of the four victims or that
23 either petitioner planned any of the killings. The alleged
24 "change" involves the issue of intent. The original
25 conclusion that petitioners harbored no specific intent to
26 kill remains unchanged. The court's reference to "intent"
27 in the latest opinions is the product of a wholly different
28 inquiry, an inquiry necessitated by Enmund. Because the
29 Arizona Supreme Court interprets the phrase "intent to
30 kill" in such a way that it includes (1) an intent to use
31 lethal force, (2) an anticipation that lethal force will or
32 might be used, and (3) a contemplation that lethal force

1 will be used by others (see State v. Ebery, *supra*), there
2 is no inconsistency between the original conclusion that
3 there was no specific intent and the recent conclusion
4 that, under Enmund, the record supports the finding that
5 petitioners intended to kill the victims. While a semantic
6 difficulty might have been avoided had the Arizona Supreme
7 Court not decided to interpret the phrase "intent to kill"
8 in such a manner as to include the other three concepts,
9 the fact remains that the 1981 and 1984 opinions are
10 concerned with different kinds of intent. Because the
11 court did not reinterpret the record, it did not violate
12 the principles set forth in Fresnell v. Georgia, 439 U.S.
13 14, 99 S.Ct. 235, 58 L.Ed.2d 207 (1978).

14 F. The rationale used by the Arizona Supreme Court in
15 affirming petitioners' death sentences is
16 consistent with that utilized by federal courts and
17 other state courts dealing with the Enmund issue.

16 Petitioners and respondent agree that the interpretations
17 given Enmund by the lower federal courts and the state courts
18 warrant consideration. However, respondent disputes any
19 contention that most of these cases decide the question in
20 petitioners' favor. In Hall v. Wainwright, 733 F.2d 766, 791
21 (11th Cir. 1984), the court rejected the defendant's Enmund
22 claim on the ground that "Hall's personal culpability is far
23 more flagrant than that of the accused in Enmund." One
24 distinction involved the defendant's presence when the
25 killings occurred; Hall was present but Enmund was not. [See
26 also Hall v. Wainwright, 545 F.Supp. 1222 (M.D.Fla. 1983);
27 State v. Hall, 420 So.2d 672 (Fla. 1982); Ruffin v. State,
28 420 So.2d 591 (Fla. 1982).] In Fleming v. Karp, 748 F.2d
29 1435, 1453 (11th Cir. 1984), the court made the following
30 observation in concluding that the imposition of the death
31 penalty did not violate Enmund:
32

1 Edmund [sic] does not require an
2 explicit finding by the sentencer (court
3 or jury) that the defendant "kill[ed],
4 attempt[ed] to kill, or intend[ed] that
5 a killing take place or that lethal
6 force be employed" before the death
7 penalty can be imposed. What is
8 important is that the sentencer be
9 satisfied the evidence establishes the
10 defendant's involvement in the murder to
11 the extent Edmund [sic] requires. If
12 the sentencer is not, or could not be,
13 so satisfied, Edmund [sic] deems the
14 death penalty unreasonably disparate and
15 thus forbids its imposition.

16 Drake v. Francis, 727 F.2d 990, 997 (11th Cir. 1984), is
17 instructive in that, while Drake was the actual murderer,
18 the court found Enmund distinguishable on the basis of what
19 it characterized as Enmund's "minor accomplice role." In
20 Johnson v. Karp, 585 F.Supp. 1496, 1507 (S.D.Ga. 1984), the
21 court rejected Johnson's Enmund claim on the ground that
22 Johnson "had been an active participant in all events
23 leading to and including the murder." The court concluded
24 as follows:

25 His culpability in that crime was
26 not vicarious as was that of the
27 petitioner in Enmund, and the holding in
28 Enmund does not give this Court cause to
29 hold Johnson's death sentence
30 disproportionate to his crime.

31 (Id. at 1506.) [See also Johnson v. Zant, 249 Ga. 812, 295
32 S.E.2d 63 (1982).]

33 Several state court opinions are also instructive. In
34 State v. Copeland, supra, Copeland and Sanny Roberts
35 robbed, kidnapped, and killed three service station
36 attendants. Both men received three death sentences. On
37 appeal, Roberts contended that Enmund precluded his being
38 sentenced to death for the three murders. The court
39 disagreed, noting that Roberts had actually killed one of
40 the victims. More significantly for the present case, the
41 court pointed out that Enmund did not preclude death
42 sentences in connection with the other two murders because

1 Roberts "was present the entire time the crimes were
2 committed, and he held a gun on at least one of the two
3 victims and forced him to lay on the ground whereupon both
4 men were shot to death." 300 S.E.2d at 67. The court held
5 that, given those circumstances, Roberts could not
6 "seriously contend that he did not intend or contemplate
7 that life would be taken." Id.

8 In People v. Davis, supra, the court noted that,
9 although the defendant was not the triggerman, Enmund did
10 not preclude imposition of the death penalty. Two of the
11 factors that the court considered in reaching that
12 conclusion were (1) Davis was present during the course of
13 the burglary that resulted in the victim's death, and
14 (2) Davis was carrying stolen items to his car when his
15 codefendant shot the victim. 447 N.E.2d at 378.

16 In Leatherwood v. State, 535 So.2d 645, 656 (Miss.
17 1983), the court found Enmund readily distinguishable on
18 its facts:

19 Though Michael Leatherwood was not
20 the "triggerman", he planned, schemed,
21 and ultimately physically subdued the
22 victim by choking him with a rope, while
23 another stabbed and bludgeoned the
24 victim to death. These are hardly the
25 facts upon which Enmund was decided by
26 the United States Supreme Court and thus
27 we find that appellant's argument is not
28 persuasive, and we find no merit in this
29 assignment of error.

30 In State v. Ruiz, 94 Ill.2d 245, 447 N.E.2d 148, 158
31 (1982), the court rejected the claim that Enmund precluded
32 the imposition of the death penalty upon the 19-year-old
33 defendant. The court distinguished Enmund on the ground
34 that Ruiz, unlike Enmund, was not tried or convicted on a
35 felony-murder theory. The court went on to hold that
36 Enmund did not apply for this reason:

1 In our case Ruiz was present throughout
2 the violent episode, actively
3 participated, except for striking a
4 fatal blow, and his conduct was such as
5 to support an inference that he
6 possessed the intent to take the lives
7 of the victims.

8 These cases strengthen respondent's contention that, in
9 the words of the Alabama Supreme Court in Ex parte Ritter,
10 supra, Earl Enmund and petitioners stand at opposite ends
11 of the spectrum of accomplice liability." 375 So.2d at
12 275.

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1 CONCLUSION

2 Because this case involves no unique circumstances, and
3 because petitioners have not yet sought other available
4 remedies, this Court should deny the instant petition.

5 Enmund does not prohibit the imposition of the penalty of
6 death upon petitioners, particularly in view of the roles
7 played by petitioners in the abduction of the victims and
8 the surrounding events. The Arizona Supreme Court has not
9 substituted a test based on "foreseeability" for the
10 standards articulated by this Court in Enmund, nor has that
11 court reinterpreted the record in such a manner as to
12 satisfy the Enmund standards. Respondent is in full
13 agreement with the principle that the punishment should fit
14 the crime; the imposition of the death penalty here does no
15 violence to that principle. For these reasons, respondent
16 respectfully requests this Court to deny the requested
17 writs of certiorari.

18 Respectfully submitted,

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REPLY BRIEF

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Supreme Court, U.S.
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MAR 4 1985

ALEXANDER L. STEVENS
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

RICKY WAYNE TISON and
RAYMOND CURTIS TISON,

Petitioners

v.

STATE OF ARIZONA,

Respondent

PETITIONERS RICKY TISON'S AND RAYMOND TISON'S
AMENDED REPLY TO RESPONSE OF STATE OF ARIZONA TO
PETITIONERS' JOINT PETITION FOR WRITS OF CERTIORARI

THIS IS A CAPITAL CASE

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I. Arizona has conceded that Petitioners were not proven to have killed, attempted to kill, or had specific intent to cause death. Petitioners may therefore not be executed under <u>Enmund v. Florida</u> , 458 U.S. 782 (1982).	1
II. Ricky and Raymond Tison were less culpable than Earl Enmund, whose sentence of death was vacated by this Court under the Eighth Amendment.	3
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Petitioners Ricky Tison and Raymond Tison file this memorandum to reply briefly to several points raised by the State of Arizona in its February 1985 Response to Petitioners' Joint Petition to this Court for a review of their sentences of death.

1. Arizona has conceded that Petitioners were not proven to have killed, attempted to kill, or had specific intent to cause death. Petitioners may therefore not be executed under Enmund v. Florida, 458 U.S. 782 (1982).

When the Arizona Supreme Court affirmed Petitioners' death sentences on direct appeal in 1981, it stated

That they [petitioners] did not specifically intend that the [victims] die, that they did not plot in advance that these homicides would take place, or that they did not actually pull the triggers on the guns which inflicted the fatal wounds is of little significance.

State v. Ricky Wayne Tison, 129 Ariz. 526, 633 P.2d 355 (1981), cert. den., 459 U.S. 882 (1982), reh. den., 459 U.S. 1024 (1982)(58a); see State v. Raymond Tison, 129 Ariz. 546, 633 P.2d 355, 359 (1981), cert. den., 459 U.S. 882 (1982), reh. den., 459 U.S. 1024 (1982)(64a).

Following this Court's decision in Enmund v. Florida, 458 U.S. 782 (1982) ("Enmund"), the Arizona Supreme Court in 1984 reaffirmed Petitioners' sentences of death by a narrow 3-2 margin. In its ruling, the Court acknowledged that "[i]n the present case the evidence does not show that petitioner killed or attempted to kill." State v. Ricky Wayne Tison, No. 4612-2-PC (Ariz., filed Oct. 18, 1984) (Ricky Tison II), reh. den., Dec. 5, 1984, slip. op. at 3(3a); State v. Raymond Curtis Tison, No. 4624-2-PC (Ariz., filed Oct. 18, 1984) (Raymond Tison II), reh. den., Dec. 5, 1984, slip. op. at 3(22a). That Court nonetheless held, utilizing a standard characterized by one of the dissenting Justices as "the tort doctrine of foreseeability," that there was evidence petitioners had "intended" to kill. Id. at 16(33a); Ricky Tison II at 16(16a).

Now Arizona, in its Response to Petitioners' Joint Petition, has itself explicitly conceded that its Supreme Court has never

found that the evidence established that petitioners had any specific intent to cause death.

At no time has that court [the Arizona Supreme Court] held that either petitioner actually killed any of the four victims or that either petitioner planned any of the killings. The alleged "change" involves the issue of intent. The original conclusion that petitioners harbored no specific intent to kill remains unchanged.

Response to Joint Petition for Writs of Certiorari ("Response") at 11 (emphasis added).

Decried of any argument that Petitioners can be shown to have had specific intent to kill. Arizona now strains to make the argument that a finding of any one of four different kinds of "intent", including "an anticipation that lethal force will or might be used", id. (emphasis added) permits execution under Enmund.

Yet, both the cases which preceded Enmund and Enmund itself clearly establish that the "intent" which must be established to justify execution constitutes more than an amorphous "anticipation." See Joint Petition at 10-18. It must be specific intent to cause death. Otherwise, as Justice Feldman noted in his dissent from the Arizona Supreme Court's 1986 majority opinion, Earl Enmund himself could constitutionally have been executed. Enmund, after all, "planned the armed robbery, transported two persons to the site of the crime, sent them into the house to commit robbery knowing that they were armed, waited for them and drove the getaway car." Ricky Tison II, slip. op. at 14 (Feldman, J., and Gordon, J., dissenting)(14a); Raymond Tison II, slip op. at 14 (Feldman, J., and Gordon, J., dissenting)(33a).¹ However,

¹ Similarly, in the case directly preceding Enmund, Lockett v. Ohio, 438 U.S. 586 (1978), the defendant suggested that she and the other defendants "could get some money by robbing a grocery store and a furniture store in the area. She warned that the grocery store's operator was a 'big guy' who carried a '.45' and that they would have 'to get him real quick.' She also volunteered to get a gun from her father's basement to aid in carrying out the robberies . . ." Id. at 590.

The defendants ultimately decided to rob a pawnshop. "Because she knew the owner, Lockett was not to be among those entering the pawnshop, though she did guide the others to the shop that night." Id. She subsequently waited in the get away car during the robbery and killing, hid the gun used in the killing.

Enmund did not kill or intend to kill and thus his culpability is plainly different from that of the robbers who killed; yet the State treated them alike and attributed to Enmund the culpability of those who killed the Kerseys. This was impermissible under the Eighth Amendment.

Enmund, supra, 458 U.S. at 798.

Since Arizona has now conceded that no finding of such an intent to kill has ever been made, Petitioners' death sentences should also be vacated.

II. Ricky and Raymond Tison were less culpable than Earl Enmund, whose sentence of death was vacated by this Court under the Eighth Amendment.

In its attempt to sustain petitioners' death sentences, Arizona has made much of a purported conflict between petitioners' statements as to precisely how far away they were from the automobile where Randy Greenawalt and Gary Tison (petitioners' father) shot the victims. Response at 7. The State now relies on a statement (Exhibit 1 to Response) given by Ricky Tison to Randy Greenawalt's attorney after the State had agreed not to seek the death penalty against petitioners in return for their testimony at Randy Greenawalt's trial.² By relying solely on a statement by and hid her co-participants in her attic. Id. at 590-91.

Nonetheless, Lockett's death sentence was vacated by this Court because the statute under which she was sentenced did not permit "consideration of relevant mitigating factors." Id. at 608. Among the factors specifically mentioned by the Court as unconstitutionally excluded from full consideration was "[t]he absence of direct proof that the defendant intended to cause the death of the victim . . ." Id.

² Both statements were made following plea agreements between the State and Ricky and Raymond Tison in which the State promised not to seek the death penalty in either Ricky's or Raymond's case. See Transcript of In Chambers Proceedings February 7, 1979, at 8. In turn, Ricky and Raymond agreed to testify for the State during Randy Greenawalt's trial. Following the agreement, Randy Greenawalt's attorney, Robert Brown, was permitted to interview each of them in the presence of Michael Irwin, the district attorney. Ricky's attorney was not present when Ricky's statement was given, although Raymond's attorney was present during Raymond's interview. Exhibit 1 of Response at 3-4; Exhibit 2 of Response at 3.

The plea agreement was later abrogated during Randy Greenawalt's trial, when Ricky and Raymond refused to testify about

one petitioner that was not admitted in evidence either at trial or at sentencing to establish so-called "aggravating factors," Arizona has implicitly conceded that the record at trial is unambiguous that petitioners were not at the scene of the killings when they occurred. Furthermore, as established below, any alleged conflict is more apparent than real, and does not change in the slightest the conclusion that Ricky and Raymond Tison lacked the intent to cause death required to support the imposition of the death penalty.³

The only evidence offered at either Ricky Tison's or Raymond Tison's trial concerning their whereabouts at the time of the killings was that Gary Tison had sent them away from the scene of the killings to a Mazda car for a water jug, and that they were standing in the dark by the Mazda when the unanticipated killings occurred. RT at 463-464 (Supplemental Appendix 247a-248a).⁴ Ricky Tison's statement attached as Exhibit 1 to the State's Response estimated that the Mazda was 25-30 yards away from the car where the victims were shot. Exhibit 1 at 43. Raymond Tison's statement to Randy Greenawalt's attorney corresponds closely to Ricky Tison's initial statement to Detective Salyer. See Exhibit

events preceding the prison break-out. See Transcript of In Chambers Proceedings, February 7, 1979, at 15. The two statements were not introduced at trial. The sentencing judge stated at the time of sentencing that he had not used the statements to arrive at his conclusions concerning aggravating circumstances, but only in his consideration of possible mitigating circumstances. He stated that he had treated the Presentence Reports in the same way. These Reports are attached as Exhibits 3 and 4 to the State's Response. See Sentencing Excerpt from Aggravation Hearing and Sentencing Transcript (78a, 82a).

³ Any post-plea bargain statements made by Ricky Tison well after the termination of any alleged conspiracy would not be admissible against Raymond Tison in any event.

⁴ The testimony was given by Sergeant Ellis H. Salyer of the Arizona Department of Public Safety, who questioned Ricky Tison at the road block where he and his brother were apprehended. Sergeant Salyer's testimony on the point consisted of relating what Ricky Tison had told him four hours after their arrest. RT 457-458 (Supplemental Appendix 240a-241a). The State presented no direct evidence at Raymond Tison's trial concerning the sequence of events immediately surrounding the slayings.

2 to State's Response at 43 ("We were loading it back up, I think, loading the Mazda back up because the water was at the bottom of all of it. And then I turned around and I could hear those shots and I could see flashes, you know.") Ricky Tison's statement made to Sergeant Salyer directly after his arrest is surely more credible than the one he gave several months later to Greenawalt's attorney.

Even more important, the State remains wholly unable to produce any evidence that petitioners had the criminal intent that would permit them to be executed under Enmund. This is because all available evidence indicates that such intent did not exist, as the Exhibits filed by the State with this Court establish.

When petitioners first decided to help their father Gary escape from prison, he promised them that no one would be hurt.⁵ After the Lincoln used in the prison breakout had a flat tire, the Lyons' Mazda was flagged, down and the Tisons' and Greenawalt's possessions were put in the Mazda. Joint Petition at 10-11. The Lincoln was driven down a road into the desert and the Lyons were placed inside it. Id. at 11. Then Raymond and Ricky were sent to the Mazda to get water. Id. While they were at the Mazda, Gary Tison and Randy Greenawalt shot the victims. Id. The obvious inference for the petitioners from the placement of the Lyons in the Lincoln and from Gary Tison's order to get water for them, was that the Lyons would be left alive in the Lincoln while Greenawalt and the Tisons drove away in the Mazda.

Even if it is assumed that Ricky's version of events as set forth in Exhibit 1 to the Response is more accurate than his earlier statement, it differed from that statement and from Raymond's only in stating that after he obtained a jug of water, he

⁵ See Raymond Tison's statement at sentencing, quoted by Justice Feldman of the Arizona Supreme Court in his dissenting opinion in Raymond Tison II, supra, slip. op. at 17-18 (36a-37a) and Raymond Tison's statement to the probation officer who prepared Ricky's and Raymond's presentence reports. Exhibit 4 to Response at 11.

returned to the Lyons and was told by Gary Tison to give Mr. Lyons some water. Exhibit 1 to Response at 38. Such an order would reasonably lead Ricky to believe that the Lyons would be left alive. Gary Tison and Randy Greenawalt then went to the other side of the car, talked briefly in the darkness, walked back to the car, raised their guns and immediately started shooting. *Id.* at 39.

Under either version, it is clear that Gary Tison either indulged in an elaborate charade to lead his teenage sons to believe that the Lyons would not be harmed, or changed his mind only moments before he and Greenawalt committed the murders. In either event, neither Ricky nor Raymond can possibly be said to have had the "intent" to cause death that is required under *Enmund*.

Finally, the evidence in *Enmund* showed at least as much participation by Earl Enmund in that case as is on the record here.

Enmund planned the armed robbery, transported two persons to the site of the crime, sent them into the house to commit the robbery knowing that they were armed, waited for them and drove the getaway car. With knowledge that they had killed, Enmund helped them flee, disposed of the weapons and attempted to evade apprehension.

State v. Ricky Tison II, *supra*, slip. op. at 14 (Feldman, J., and Gordon, J., dissenting) (14a); *State v. Raymond Tison II*, *supra*, slip. op. at 14 (Feldman, J., and Gordon, J., dissenting) (33a).

Additionally, the sentencing judge in Ricky Tison's and Raymond Tison's cases found the presence of mitigating circumstances not established in Enmund's case. These factors included petitioners' youth at the time of the crimes (Raymond Tison was 18, and Ricky Tison was 19) and their lack of prior felony records. (83a)⁶

⁶ The State argues in its Response that petitioners and their father "began planning the escape a couple of years before it actually happened." Response at 1. This assertion misleadingly summarizes Ricky Tison's statement. Ricky stated that he and his brother had had "thoughts" about his father's getting out of prison for years, but had become involved in the escape plan that was used only a week before the escape. Exhibit 1 to Response at 8. Furthermore, a "couple of years" before the escape Raymond and Ricky would have been at most 15 and 16 years old, respectively, and hardly in a position to plan a prison break.

Therefore, the death penalty is even more unconstitutionally disproportionate for Ricky Tison and Raymond Tison than for Earl Enmund, *see Enmund, supra*, 478 U.S. at 796, 798. This Court should grant review of their sentences.

III. Conflicts exist in the lower courts concerning the proper interpretation of *Enmund* in determining the constitutionality of execution.

The State cites many cases that purportedly support its view that *Enmund* permits execution of petitioners and that their cases need not be reviewed. However, Arizona relies in part on cases which are inapposite because they concern defendants who were triggermen⁷ or were convicted of malice murder,⁸ facts which the State has conceded do not apply to Ricky and Raymond Tison. Response at 11.

Finally, any conflict among the cases⁹ only adds support to Petitioners' contention that the issue of the breadth of *Enmund*, squarely raised by their cases, should be decided by this Court. Petitioners fully agree with the State's contention "that the interpretations given *Enmund* by the lower federal courts and the state courts warrant consideration." Response at 12, and believe that such consideration can be most appropriately and expeditiously done through review of their cases. The issue is clearly one of national importance, and its resolution will lend guidance to state and federal courts on every level.

⁷ *See Drake v. Francis*, 727 F.2d 990, 997 (11th Cir. 1984); *Ross v. Hopper*, 716 F.2d 1528, 1533 (11th Cir. 1983), *reh. gr.*, 729 F.2d 1293 (11th Cir. 1984).

⁸ *See Fleming v. Kemp*, 748 F.2d 1435, 1434 (11th Cir. 1984); *Johnson v. Kemp*, 585 F. Supp. 1496, 1507 (S.D. Ga. 1984).

⁹ Compare, e. g., *People v. Tiller*, 94 Ill. 2d 303, 447 N.E. 2d 174, 185 (1982), *cert. den.*, 461 U.S. 944 (1983) ("[D]efendant was not shown to have planned or in any manner participated in the killings, and under the authority of *Enmund* the death sentences must be vacated.") with *Ricky Tison II*, slip. op. at 3 ("Intend to kill includes a situation in which the defendant intended, contemplated, or anticipated that lethal force would or might be taken in accomplishing the underlying felony.")

CONCLUSION

— For the reasons set forth above, Petitioners asked that the Court grant their Joint Petition for Writs of Certiorari to review their unconstitutionally imposed sentences of death.

Respectfully submitted this the 11th day of March, 1985.

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EXHIBIT Y

1 Martinez. You are excused from further attendance at the
2 trial.

3 THE WITNESS: Thank you, sir.

4 THE COURT: Call your next
5 witness.

6 MR. IRWIN: Yes, Your Honor,
7 at this time I would like to present to the Court a
8 stipulation and ask that it be submitted to the jury.

9 THE COURT: Ladies and
10 gentlemen, the attorneys have again stipulated requesting
11 a certain matter. The stipulation is that the .45 calibre
12 automatic pistol under the body of Gary Tison was owned on
13 July 31, 1978, by John P. Lyons. Again I remind you that
14 when counsel enter into a stipulation you are to regard
15 what they stipulate upon as a fact established in the case.

16 MR. IRWIN: The State calls
17 Ellis Myer.

18 ELLIS SALYER
19 having been duly sworn to tell the truth, the whole truth,
20 and nothing but the truth, testified on his oath as follows:

21 DIRECT EXAMINATION

22 BY MR. IRWIN:

23 Q. Would you state your name, please?

24 A. Ellis W. Salyer.

25 Q. What is your occupation, Ellis?

26 A. I am a sergeant with the Department of Public
27
28

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1 Safety, criminal investigation bureau.

2 Q. Where do you work for the Department of Public
3 Safety?

4 A. In Phoenix, Arizona.

5 Q. And how long have you been an officer with the
6 Department of Public Safety?

7 A. Approximately 15 years.

8 Q. Ellis, were you in the vicinity of Cocklebury
9 and Chuichu Roads on the date of August 11, 1978?

10 A. Yes, I was.

11 Q. What caused you to go to that location?

12 A. A call from Sheriff Rayes of Pinal County.

13 Q. And what was going on there that morning?

14 A. There had been a roadblock where the Tisons had
15 been apprehended and the sheriff asked if I would - - me
16 and some of my men would come down and help with the
17 interviews.

18 Q. Did you in fact interview some person that
19 morning?

20 A. Yes, I did.

21 Q. And is that same person present in the courtroom
22 today?

23 A. Yes, sir, he is.

24 Q. Would you indicate, please, who the person is?

25 A. It's Ricky Tison.

26 Q. Where did this interview take place?

27 A. In a Pinal County car on Chuichu Road at the scene
28 of the roadblock.

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1 Q. You recall approximately what time this was?
 2 A. Approximately ten minutes to 7:00.
 3 Q. Where was Ricky Tison when you saw him just prior
 4 to the interview?
 5 A. Seated in the back seat of the deputy's car.
 6 Q. Was anyone else inside the car with him at that
 7 time?
 8 A. Yes, there was.
 9 Q. Who was that?
 10 A. I have no idea.
 11 Q. Did you speak with officers from Pinal County
 12 prior to interviewing Ricky Tison?
 13 A. Yes, I did.
 14 Q. Who did you speak with?
 15 A. I spoke with Deputy Ed Parville and Tom Solis.
 16 Q. Was it at that time that you went to the vehicle
 17 to interview Ricky Tison?
 18 A. Yes, it is.
 19 Q. Would you describe his physical appearance as you
 20 entered the vehicle?
 21 A. His physical appearance was, he was seated in the
 22 back seat of the deputy's car naked, handcuffed and had
 23 blood splattered on his chest.
 24 Q. Did you, or was someone with you when you went
 25 to the car?
 26 A. Yes, there was.
 27 Q. Who was that?
 28 A. Agent Dave Sanchez from the D.P.S. Al Stooks.

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1 Pinal County Attorney's Office.
 2 Q. Was the defendant advised of his rights?
 3 A. Yes, he was.
 4 Q. Who did that?
 5 A. Officer Sanchez.
 6 Q. And you recall what was said?
 7 A. He read him his rights from the standard rights
 8 card which is the Miranda rights.
 9 Q. After that was done was questioning commenced?
 10 A. Yes, it was.
 11 Q. Did you begin the questioning yourself?
 12 A. I believe Agent Sanchez started the questioning.
 13 Q. Could you describe, please, how the questioning
 14 went?
 15 A. Well, first I asked Ricky if he was okay, if he
 16 was hurt, if he needed any medical attention. He stated
 17 no. I offered him some coffee, something to eat. Again
 18 he refused.
 19 Q. My one concern was to ascertain if Gary Tison was
 20 in fact with the group and the location of the girl that
 21 hadn't been found.
 22 As I talked to Ricky about the
 23 - - he first stated all they did was break the old man out.
 24 As I got to the point about the white Lincoln he became
 25 very excited. Said he didn't want to talk anymore.
 26 Didn't know anything about the Lincoln.
 27 At this time I started to get
 28 out of the car when someone came by and mentioned something

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1 about footprints.

2 Q. Did you return to the car at that time?

3 A. I hadn't left the car.

4 Q. What did you say at that time?

5 A. I told Ricky that there had been footprints found
6 around the scene of the Lincoln and I asked him about what
7 type shoes he was wearing. Again he became excited, said,
8 "All I know is that me and my brothers didn't shoot those
9 people."

10 Q. What was your next statement?

11 A. I said, "Okay. I didn't say that you shot those
12 people. I'm just trying to find out what happened."

13 I said, "Let's just start at the beginning from
14 when the thing first started and just go from there."

15 Q. Did you make some other statement to him at that
16 time, Ellis?

17 A. I don't understand your - -

18 Q. When you said, "Let's start at the beginning,"
19 what happened next?

20 A. Ricky said that they had - - he and his brothers
21 had been planning to break their dad out for sometime, in
22 fact had gathered guns over a period of time.

23 Q. Did he state anything about who was to be involved
24 in the breakout?

25 A. Ricky, Raymond, Donny, and Randy Greenawalt and
26 Gary.

27 Q. What else did he tell you about the plans prior
28 to the breakout?

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1 A. Okay, he collected guns over a period of time.

2 MR. BEERS: I'm going to
3 object to any testimony about plans prior to the breakout
4 on the grounds it is not relevant.

5 THE COURT: The objection is
6 overruled.

7 THE WITNESS: He collected guns
8 over a period of time, did in fact visit Gary on the 31st
9 of July and at that visit they agreed that the next day
10 they would break him out.

11 BY MR. IMHIN:

12 Q. Did he indicate that he had any prior knowledge
13 that someone was coming with Gary?

14 A. Yes.

15 Q. Did he then indicate what occurred on the morning
16 of July 30?

17 MR. BEERS: May I voir dire
18 the witness briefly, Your Honor?

19 THE COURT: Yes, you may.

20 VOIR DIRE EXAMINATION

21 BY MR. BEERS:

22 Q. Are you referring to notes?

23 A. I am referring to my report.

24 Q. Is that the same report that I have a copy of
25 here?

26 A. Yes.

27 MR. BEERS: Nothing further.

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CONTINUED DIRECT EXAMINATION

BY MR. IRWIN:

Q. Did he say something at that time about what occurred on the morning of July 30?

A. That they met at the hospital, Pinal Hospital with a Lincoln and a green Ford. They left the Lincoln at the hospital, drove to the prison in the green Ford, did in fact break Randy and Gary out.

Q. Did he describe who met there at the hospital?

A. Donny, Ricky and Raymond met there with Gary and Randy.

Q. Did he describe the details of the breakout?

A. No, I didn't get into that no.

Q. Did he next talk about leaving the prison?

A. They left the prison, drove back to the hospital in the green Ford, transferred into the white Lincoln, and departed leaving the green Ford at the hospital.

Q. What did he next describe, Ellis?

A. Driving back roads, just gaining time and distance between themselves and the authorities.

Q. Did he indicate that something happened during that time?

A. At one time they had a flat tire on the Lincoln. They changed it and put the spare tire on, continued on their way. They ultimately had another flat tire. Then they didn't have a spare, so - -

Q. Did he tell you what happened next?

A. Yes.

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Q. What did he tell you?

A. That they parked along side the road and waited for the first car to come down the road.

Q. Did he tell you what kind of car that was?

A. An orange Mazda.

Q. Did he tell you what happened after that?

A. They all pulled guns on the occupants of the Mazda forcing them to stop on the roadway.

Did the defendant tell you what happened after that?

A. The people were taken out of the Mazda, placed in the back seat of the Lincoln and driven about five or six miles down a dirt road.

Q. What did he next describe to you?

A. The two vehicles were parked trunk to trunk, the things in the Lincoln being transferred over to the Mazda, the people being taken out of the Lincoln and placed along side the road.

Q. Did he tell you what happened after that?

A. The Lincoln was driven in the desert 50 or 75 yards with the people still standing along side the road.

Q. And did he tell you what happened next?

A. Gary and Randy went to the Lincoln, shot a few holes in it, then asked that the people from the Mazda be brought to the Lincoln, placed in the back seat of the Lincoln.

At this point Gary told the boys to go back to the Mazda and get the water jug. About the

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1 time they get back to the Mazda they hear shotguns going off.
 2 Due to the darkness all they could see was the flashes
 3 from the shotguns.

4 Q. Did he tell you what happened after that?

5 A. Gary and Randy came back to the side of the road
 6 where the Mazda was and Gary made a statement, "It sure
 7 is hard to kill a Lincoln," or, "It sure takes a lot to kill
 8 a Lincoln."

9 Q. Did he indicate that some property had been
 10 taken?

11 A. He indicated that a wallet belonging to the male
 12 subject was taken which had a couple hundred dollars in it,
 13 a .45 calibre automatic and a .38 calibre chrome plated
 14 revolver.

15 Q. Did he tell you what happened after his father
 16 got back to the car?

17 A. They all loaded in the Mazda and drove away.

18 Q. Did he describe what they did after that?

19 A. They drove to some - - some small town, went to a
 20 store, went in to buy six - - they wanted six cans of gray
 21 primer paint. They only had five in the store, so that
 22 is what they bought.

23 Q. Did he tell you what they did after that?

24 A. Headed north, entered a country where pine trees
 25 were. And that's where they stopped and spray painted the
 26 Mazda.

27 Q. Did he tell you what they did after that?

28 A. While camped in the pine trees Randy Greenawalt and

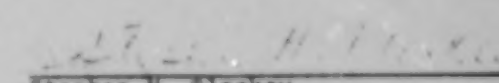
SUPERIOR COURT
 YUMA, ARIZONA

CERTIFICATE OF SERVICE

I, Stephen H. Oleskey, Attorney of Record for the Petitioners, and a member of the Bar of the Supreme Court of the United States, hereby certify that in accordance with the Rules of the Supreme Court, I have this day served a true and correct copy of Petitioners Ricky Tison's and Raymond Tison's Amended Reply to Response of State of Arizona to Petitioners' Joint Petition for Writs of Certiorari upon Respondent by sending a copy of said documents by first class mail addressed to:

David R. Cole	Mr. Robert E. Corbin
Assistant Attorney General	Attorney General of the State of Arizona
1275 W. Washington, 1st Floor	403 West Congress Street
Phoenix, Arizona 85007	Tucson, Arizona 85701

This 11th day of March, 1985.


 Stephen H. Oleskey

JOINT APPENDIX

No. 84-6075

Supreme Court, U.S.
FILED
APR 7 1986
JOSEPH F. SPANIOLO, JR.
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1985

**RICKY WAYNE TISON and
RAYMOND CURTIS TISON, PETITIONERS**

v.

STATE OF ARIZONA, RESPONDENT

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED JANUARY 16, 1985
CERTIORARI GRANTED FEBRUARY 24, 1986**

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SUPERIOR COURT OF ARIZONA
COUNTY OF YUMA

Criminal No. 9299

RAYMOND CURTIS TISON

RELEVANT DOCKET ENTRIES

DATE	Nr.	PROCEEDINGS
Jun 23, 1983	1.	PETITION FOR POST CONVICTION RELIEF
Jun 23, 1983	2.	APPLICATION FOR STAY OF EXECUTION OF DEATH PENALTY
Jun 29, 1983	3.	RESPONSE TO PETITION FOR POST CONVICTION RELIEF
Jun 29, 1983	4.	RESPONSE TO APPLICATION FOR STAY OF EXECUTION OF DEATH PENALTY
Jun 29, 1983	5.	ORDER APPOINTING COUNSEL
Jun 29, 1983	6.	ORDER FOR STAY OF EXECUTION OF DEATH PENALTY
Jul 8, 1983	7.	REPLY TO RESPONSE TO PETITION FOR POST CONVICTION RELIEF
Jul 12, 1983	8.	ORDER EXTENDING TIME TO SUPPLEMENT REPLY AND ORDER ASSIGNING HEARING JUDGE
Jul 22, 1983	9.	AFFIDAVIT IN SUPPORT OF POST-CONVICTION RELIEF
Jul 22, 1983	10.	ORDER
Jul 29, 1983	11.	MOTION FOR REHEARING
Aug 11, 1983	12.	RESPONSE TO MOTION FOR REHEARING

DATE	Nr.	PROCEEDINGS
Aug 26, 1983	13.	ORDER
Oct 17, 1983	14.	MOTION FOR LEAVE TO FILE DE- LAYED PETITION FOR REVIEW
Oct 17, 1983	15.	ORDER
Oct 19, 1983	16.	PETITION FOR REVIEW
		* * * *

SUPREME COURT OF ARIZONA

DATE	Nr.	PROCEEDINGS
25 Oct 83	1	Petition for Review [of Post-Conviction Relief Order]
3 Nov 83	2	Request for Full Briefing and Oral Argument
6 Dec 83	3	ORDERED: Petition for Review = GRANTED
		FURTHER ORDERED: Granting the request for oral argument
		FURTHER ORDERED: that the appellant has 30 days from the date of this order within which to file an additional brief addressing the application of Enmund v. Florida, — U.S. —, 102 S.Ct. 3368, 13 L.Ed.2d 1140 (1982), and especially addressing the implications of the language found in the opinion of the United States Supreme Court concerning the employment of lethal force by an accused or others and whether such language is applicable to the facts of this case
		FURTHER ORDERED: that the State shall have 15 days from the service of the appellant's supplemental brief within which to file a reply brief addressing the same subject
03 Jan 84	4	ORDERED: Consolidating the above-entitled and numbered matters for oral argument
05 Jan 84	5	APPELLANT'S SUPPLEMENTAL BRIEF
13 Jan 84	7	Submission of Supplemental Authority
19 Jan 84	8	Motion for an Order in Re: Crime Victim Accounts

DATE	Nr.	PROCEEDINGS
24 Jan 84	9	Response to Motion in Re: Crime Victim Account
26 Jan 84	10	APPELLEE'S SUPPLEMENTAL ANSWERING BRIEF
07 Feb 84	11	ORDERED: Motion for an Order in Re: Crime Victim Accounts = GRANTED
15 Feb 84	13	Submission of Supplemental Authority
16 Feb 84		Oral Argument—submitted for decision en banc
18 Oct 84	14	OPINION—Relief denied (Hays); concurring in part, dissenting in part (Feldman); concurring in dissent (Gordon)
02 Nov 84	15	Motion for Reconsideration
16 Nov 84	16	Opposition to Motion for Reconsideration/Rehearing
04 Dec 84	17	ORDERED: Motion for Reconsideration = DENIED
		Justices Gordon and Feldman voting to grant

SUPERIOR COURT OF ARIZONA
COUNTY OF YUMA

Criminal No. 9299

RICKY WAYNE TISON

RELEVANT DOCKET ENTRIES

DATE	Nr.	PROCEEDINGS
Jun 22, 1983	1.	PETITION FOR POST-CONVICTION RELIEF
Jun 27, 1983	2.	RESPONSE TO PETITION FOR POST-CONVICTION RELIEF
Jun 27, 1983	3.	RESPONSE TO APPLICATION FOR STAY OF EXECUTION OF DEATH PENALTY
Jun 29, 1983	4.	ORDER APPOINTING COUNSEL
Jun 29, 1983	5.	ORDER FOR STAY OF EXECUTION OF DEATH PENALTY
Jul 8, 1983	6.	REPLY TO RESPONSE TO PETITION FOR POST CONVICTION RELIEF
Jul 12, 1983	7.	ORDER EXTENDING TIME TO SUPPLEMENT REPLY AND ORDER ASSIGNING HEARING JUDGE
Jul 18, 1983	8.	AFFIDAVIT IN SUPPORT OF POST CONVICTION RELIEF
Jul 22, 1983	9.	ORDER
Jul 29, 1983	10.	MOTION FOR REHEARING
Aug 11, 1983	11.	RESPONSE TO MOTION FOR REHEARING
Aug 26, 1983	12.	ORDER

DATE	Nr.	PROCEEDINGS
Oct 17, 1983	13.	MOTION FOR LEAVE TO FILE DELAYED PETITION FOR REVIEW
Oct 17, 1983	14.	ORDER
Oct 19, 1983	15.	PETITION FOR REVIEW
		• • • •

SUPREME COURT OF ARIZONA

DATE	Nr.	PROCEEDINGS
25 Oct 83	1	Petition for Review [of Post-Conviction Relief Order]
3 Nov 83	2	Request for Full Briefing and Oral Argument
6 Dec 83	3	ORDERED: Petition for Review = GRANTED
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		FURTHER ORDERED: that the appellant has 30 days from the date of this order within which to file an additional brief addressing the application of Enmund v. Florida, — U.S. —, 102 S.Ct. 3368, 13 L.Ed.2d 1140 (1982), and especially addressing the implications of the language found in the opinion of the United States Supreme Court concerning the employment of lethal force by an accused or others and whether such language is applicable to the facts of this case
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26 Jan 84	10	APPELLEE'S SUPPLEMENTAL ANSWERING BRIEF
07 Feb 84	11	ORDERED: Motion for an Order in Re: Crime Victim Accounts = GRANTED
15 Feb 84	13	Submission of Supplemental Authority
16 Feb 84		Oral Argument—submitted for decision en banc
16 Mar 84	14	Notice of Supplemental Authority [Appellee State]
18 Oct 84	15	OPINION—Relief denied (Hays); concurring in part, dissenting in part (Feldman); concurring in dissent (Gordon)
02 Nov 84	16	Motion for Reconsideration
16 Nov 84	17	Opposition to Motion for Reconsideration/Rehearing
04 Dec 84	18	ORDERED: Motion for Reconsideration = DENIED

Justices Gordon and Feldman voting to grant

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA

No. 9299

STATE OF ARIZONA, PLAINTIFF

vs

RAYMOND CURTIS TISON and
RICKY WAYNE TISON, DEFENDANTS

[Filed May 14, 1979]

SWORN STATEMENT OF
RAYMOND CURTIS TISON

Statement Taken By: Mr. Tom Brawley
Detective Lieutenant
Commander-Detective Division
Flagstaff, Arizona

[2] January 26, 1979, 7:04 P.M.
Division I, Superior Court, Pinal County

MR. BAGNALL: For the record I want it known that anything said by Mr. Tison, Raymond Tison, as a result of this examination be limited to the trial or any trial that will be taken in the matter of Randy Greenawalt in Yuma, and that in the event of a new trial in Pinal County it may not be used, and in the event of a trial in Colorado it may not be used. Will you stipulate to all that?

MR. IRWIN: I think that has been understood all along, if you want to put that on the record, all right.

MR. BAGNALL: Okay. Fire away.

RAYMOND CURTIS TISON, having been duly sworn according to law, testified as follows:

MR. BRAWLEY: This is an interview with Raymond Curtis Tison. Present is Mike Irwin, Yuma County Attorney, and Harry Bagnall, Raymond's attorney.

EXAMINATION

BY MR. BRAWLEY:

Q. Ray, will you basically start out by telling us what happened after you left the prison on July the [3] 31st of 1978?

A. Well, we—we loaded up in the car and went to the hospital.

Q. Which car? Let's describe each vehicle as we go through them.

A. We loaded up in the Galaxy, went to the hospital, changed over to the Lincoln, and went down that road right by the hospital out to the highway, went down the highway a little ways onto a turnoff to Attaway Road. Then we went down Attaway Road, I believe that is Hunt Highway that it runs into, and went off through there and up to Williams Field Road, and we got on the free-

way at Williams Field Road and went down to, I think it is Baseline and headed west on Baseline and followed it on out. We were either—we had passed the freeway, or we were on the freeway just for a few minutes, and then we started hitting back roads, got off into desert and cactus and all this, and then we went to this house, this abandoned house.

Q. Did you spend the night in that abandoned house?

A. Yes.

Q. About what time did you get there? Was that afternoon, or evening, or was it night?

A. It was during the day, but it was afternoon.

[4] I can't—I don't know the direct time—the right time.

Q. Was it late afternoon, early afternoon?

A. I would say it was late afternoon. Yes, late afternoon. Maybe not, no. I can't say for sure.

Q. Okay. Can you describe the place that you stayed?

A. Just an abandoned house, a barn next to it, just out in the desert.

Q. Did it have any other buildings?

A. There was a house, and a barn.

Q. Did it have a fence?

A. It had a—it had like a chicken wire fence, a little square area chicken wire fence. I don't know what it was used for, chickens or something like that.

Q. What kind of roof did the barn have on it?

A. Tin.

Q. How long were you there?

A. Two or three days. I'm not positive on the time.

Q. At night did you notice anything?

A. What we thought could have been helicopters off over the top of the ridge of a mountain, lights and all this.

Q. At any time while you were there, or just [5] before you got there did you have car troubles?

A. Before we got there?

Q. Yes.

A. No.

Q. Did you have a flat or something while you were there?

A. While we were there?

Q. While you were there?

A. Yes.

Q. And then after you had stayed there a while you decided to leave; is that correct?

A. Dad decided we better move on, yes.

Q. So you went off in the Lincoln and kept driving?

A. Yes.

Q. Was this day or night?

A. I think it was early evening.

Q. Was it dark yet?

A. Yes, it was dark.

Q. But it hadn't been dark long?

A. A couple hours.

Q. Okay.

A. Into the night.

Q. Where did you go from there?

A. I—it was back roads. I can't tell you just where we went. I think at one time it could have been [6] Yuma we were close to, because I could see lights off in the distance there, it was of a city, of some kind of town.

Q. Did you eventually come to a paved road?

A. Yes.

Q. Did your dad refer to it as what, a truck road or something like that, a truck route?

A. Truck route? He could have. I don't remember just what it was. It was a long time ago.

Q. When you got to the paved road, which way did you go?

A. You see, the dirt road ended, and we went on a paved road, and it was curvy, you know, kind of a curvy road, and that was paved. Then we come up to the highway of some kind.

Q. When you got to the highway, did you go right or left?

A. Well, I can't say for sure, because while we were on the curvy roads there before we came up to the highway that is when I fell asleep, and then I woke up while we were on this other highway.

Q. Did you drive for a ways down the highway and then something happened?

A. I didn't drive.

Q. No. Whomever, you were in the car and you drove [7] for a while, and then something happened?

A. Yes, we had a blowout.

Q. You had a blowout then?

A. Yes.

Q. Then what did you decide to do?

A. Well, we drove a little ways on the blowout and we stopped once or twice right after we had the blowout. We stopped, got out, and I woke up just a few minutes before that, and we got out and decided, we decided, we will try to go a little farther. Got back in, drove a little farther, and the tread was coming off, and beating up against the fender, so we decided to get out and take the tread off. We pulled the ball of the tread off, and so we pulled the ball off, and then we hopped back in the car and we go a little farther on, and at that time we decided that we weren't getting nowhere fast, you know.

Q. Did you stop then?

A. Yes.

Q. And what was decided at that time?

A. To flag a car down and take it.

Q. Okay. Who decided to do that?

A. Dad. He decided. He made all—most of the decisions at the time.

Q. So what did you do? Did each of you assume [8] a position somewhere?

A. Yes. I flagged a car down and the rest of them got off on the side of the road.

Q. Do you know who got off on which side of the road?

A. I believe dad and Randy got off on the opposite side of the road, and Ricky and Donny got on the same side of the road that the car was on.

Q. When they got off to the sides of the road, did they have guns?

A. I believe so.

Q. Did you have a gun?

A. No, not on my person. There was probably a gun in the car somewhere.

Q. Do you know which guns each person had?

A. I can't say for sure, you know, what guns they had. I think—I think dad and Randy had shotguns. I am not sure what Donny had. I am not sure what Ricky had, either.

Q. Okay. After you stayed there for a little while did a car come by?

A. Yes.

Q. Did it stop?

A. The first car?

Q. Yes.

[9] A. No.

Q. It kept on going?

A. Yes, and then there was another car.

Q. What happened with the second car?

A. I flagged it down and they went past the Lincoln a little ways, turned around, and then came back.

Q. And how did it park?

A. Behind the Lincoln.

Q. In other words, it kind of made a U-turn and pulled in behind?

A. Yes.

Q. Were you the only person visible?

A. Yes.

Q. And did somebody get out of the car?

A. Yes. The man got out, Mr. Lyons.

Q. What did he do?

A. He came up to me and I started talking to him, and just carrying on a cordial conversation with him.

Q. Were you explaining to him about the tire?

A. Yes, and he—I took him around and showed him the tire.

Q. Where was the flat?

A. The right rear.

Q. On the right rear?

[10] A. Yes.

Q. So you went around and looked on it?

A. Yes.

Q. Okay. And then what happened?

A. After we looked on it, when we were talking, and we went back around to the driver's side up towards the front of the Lincoln.

Q. You and Mr. Lyons?

A. Yes.

Q. Okay.

A. And then I heard some noise going on back there, and I turned around and I knew what it was.

Q. You mean noise back towards the Mazda?

A. Towards the Mazda.

Q. And what happened?

A. I turned around and I see dad and Randy had come up, and, yes, they come up, and I can't remember where Ricky and Donny were. Randy and dad were in the street kind of, you know, on the driver's side of the Mazda. Those were the only ones I could see.

Q. They were near the Mazda on the highway?

A. Yes.

Q. Did they have guns?

A. Yes.

Q. What were they doing?

[11] A. They were, I think they were getting the people out of the Mazda, or there may have been one person out of the Mazda, the woman, yes, Mrs. Lyons, I guess it was.

Q. Did she come up to where you were?

A. No. She must have gotten out at another time, because I didn't see her get out.

Q. Did she have the baby with her then?

A. No.

Q. And you could still see another person in the car?

A. Yes. It was a silhouette kind of of somebody else in there.

Q. Okay. Then what happened?

A. At that time, all right, I think I told Mr. Lyons, or asked him, you know, I never did threaten those people, not Mr. Lyons or anything like this, I just asked him to join the rest of them. Then he went back there and I followed. Then he started, you know, saying that he didn't want no trouble, and he said there was a .45 in the back of the Mazda.

Q. Mr. Lyons said that?

A. Yes.

Q. Then what happened?

A. Oh, at that time, by the time we got back there to the Mazda everybody else was out of the Mazda. I [12] believe the .45 was gotten out of the back of the Mazda at that time.

Q. Do you know who got it?

A. I can't say for sure. I saw the hatchback up, and that is why I think it was got out.

Q. Okay. So, now, you are all back at the Mazda; right?

A. Right.

Q. Then what happened then?

A. We loaded them into the Lincoln, the three people and the baby, loaded them into the Lincoln in the back seat.

Q. Did Mr. Lyons say anything?

A. The only thing I can remember him saying was about not wanting no trouble.

Q. So did you put them all into the Lincoln then?

A. Yes, in the back seat.

Q. They were all in the back seat?

A. Yes.

Q. And then what did you do next?

A. We turned the Lincoln around, took it down back the way we had come a little ways to the dirt road.

Q. Who was driving the Lincoln?

A. Well, I was driving the Lincoln, Donny was a passenger, and the other three were in the Mazda, I [13] believe.

Q. And did the Mazda follow you?

A. Yes.

Q. And you then turned on a dirt road?

A. Yes.

Q. How far did you go down the dirt road?

A. I am not sure how far, but we went down there a ways, and turned right, yes, right on the other road. It was a gas line road.

Q. How do you know it was a gas line road?

A. Turning on to the road I saw some pipes coming up out of the ground with a little sign on it, and I had seen pipes like that before, you know, and they were gas line pipes that I had seen before; so I just figured that that is what it was.

Q. How far did you drive down that road?

A. I can't say for sure, you know, what distance it was.

Q. But you drove a little ways down that road?

A. Yes.

Q. And then stopped?

A. Yes.

Q. And after you stopped, what were the positions of the cars?

A. Trunk to trunk.

[14] Q. They were backed into each other?

A. Yes.

Q. And then what occurred?

A. People were taken out of the Lincoln, the headlights left on the Lincoln, and they were put up front.

Q. Who took them out of the Lincoln?

A. I think it was dad. I am not quite sure who took them out.

Q. Then they were taken up to the front of the Lincoln?

A. Yes, in the headlights there.

Q. Okay. Then what occurred?

A. We started unloading the Mazda. We unloaded the Mazda first, taking everything out, and then we put everything out of the Lincoln into the Mazda.

Q. Did you notice a dog at any time during this?

A. There could have been a dog. I'm not sure. There was a younger woman, Miss Tyson, I believe, and she was carrying something. It could have been a dog. I never heard the dog bark or nothing, and I wasn't really paying that much attention.

Q. Okay. So they are out in front of the Lincoln with the lights on them, and there is three of you taking the stuff out of the Mazda?

A. Yes.

[15] Q. What did you do, unload the Mazda?

A. Yes.

Q. And then load your stuff out of the Lincoln into the Mazda?

A. Yes.

Q. And who was doing that?

A. Me, Ricky, and—me, and Ricky were there all the time, and Randy was there, but I think Randy left one and then come back.

Q. Who was watching the pepole at that time?

A. It was alternating off between Donny and dad, and dad most of the time, you know, but whenever dad had to come back and tell us something he would tell Donny, you know, to watch them.

Q. Okay. After you had switched all the property from the vehicles, what did you do?

A. Backed the Lincoln up into the desert.

Q. Who backed in there?

A. I did.

Q. Was there a reason why you put it where you did?

A. Because my dad had picked out the place, and told me to put it up back off the road a ways.

Q. So you drove up there and parked?

A. Yes, I backed it up there and parked it.

[16] Q. Did you take anything more out of it then?

A. Keys and license plates.

Q. You took the license plates off?

A. Yes.

Q. What kind of license plates were they?

A. New Mexico, I believe.

Q. New Mexico license plates?

A. I believe so.

Q. What did you do with them?

A. I think they went on the Mazda.

Q. What happened then after you left, after you got the license plates and turned off the engine?

A. I walked back out, and dad had followed me out there, and he had followed the car out there, and walked back towards them. I got just a little ways behind him, turned around and he started shooting the Lincoln, the front of the Lincoln, the radiator.

Q. What was he shooting it with?

A. A .16 gauge, I believe.

Q. That was a .16 gauge shotgun?

A. Yes.

Q. How many times did he shoot it?

A. I am not sure just how many time, but it was more than once. It was a few times.

Q. After he shot the Lincoln did he make any [17] comments about it?

A. He may have said something to the effect that "Lincolns are hard to kill," or something like that.

Q. Then what occurred next?

A. We walked back down to the car. Well, he didn't make the statement until we were at the car, at the Mazda.

Q. So then after he finished shooting the car you and him walked back to the Mazda?

A. Yes.

Q. How far away was that?

A. I am not sure. You could see the Mazda.

Q. So it wasn't that far?

A. No.

Q. When you got back to the Mazda what had happened?

A. I escorted the people up to the Lincoln.

Q. Who escorted them?

A. All of us, that would be.

Q. Did you all have guns at that time?

A. Yes, I think so. Yes, I believe so, everybody had one.

Q. After you got them escorted up to the Lincoln, what happened there?

A. Loaded them in, into the Lincoln.

[18] Q. Were they put in the front or back?

A. In the back. Well, I think two were put in the back, and one up in front, and the baby in back.

Q. Do you know who was up front?

A. I believe the young lady, Miss Tyson.

Q. They are all in the car now, and what occurred next?

A. Well, Mr. Lyons, he kept making statements about not wanting no trouble, saying "If you," you know, "you all just tell us what you want us to do, and we will sit out here until mid-afternoon," whatever, you know, "won't snitch you off," whatever, and then he was talking about, you know, just I think he said "Give us some water. That is all we ask for, just leave us out here, and you all go home."

Q. What happened after he asked for the water?

A. I looked at my dad and he was, you know, he was like in conflict with himself, you know. What it was, I think it was the baby being there and all this, and he

wasn't sure about what to do, that is what I think, now, about it.

Q. Okay.

A. He thought about it just for a few seconds, and sent us boys down to the Mazda to get a water jug.

Q. All three of you?

[19] A. Yes. Well Donny was, I believe, Donny was already there.

Q. At the Mazda?

A. Yes.

Q. So did you go to the Mazda to get water?

A. Yes.

Q. Did you get water?

A. Yes, well, we had to unload everything to get to the water jug, and I believe we got the jug filled.

Q. Did somebody take the jug of water back?

A. I don't remember anybody—somebody, it seems to me like they started heading out to that, but I don't remember going back. As I remember, we were there and just as we were getting a little water, we could have even started loading it back up, but that is when we started hearing the shots.

Q. How many shots did you hear?

A. I can't say for sure, you know. It was quite a few.

Q. Did you turn and look?

A. Yes, I saw some flashes and all that.

Q. Tell me about the flashes? Could you see people at the car, outside the car?

A. I could see silhouettes.

Q. How many?

[20] A. Two.

Q. And how were they positioned?

A. One on each side of the car.

Q. Could you tell who those people were?

A. Well, it could have been only two, you know, me, Ricky, and Donny were down at the Mazda, so it could only have been dad and Randy.

Q. And you could see flashes coming from there?

A. Pardon?

Q. You could see flashes at that time?

A. Yes.

Q. Were they going towards the car?

A. Yes, I believe.

Q. Were flashes coming from both sides that were down there?

A. Both sides of the car, yes.

Q. Were they both at the same time?

A. Same time frame, you know, they were like simultaneous.

Q. Okay. Were the doors to the Lincoln open at that time?

A. You know, like I say, I could see the silhouettes of the car and the people, the side of the car, and from what I could see there was no doors open.

Q. Do you know if any of the windows were open?

[21] A. Could have been. I am not certain.

Q. Was it shotguns you were hearing?

A. Yes, I believe so.

Q. How long did this go on?

A. Longer than what it should have. It—it is hard to set a time on it, you know, my mind was just racing. I was trying to work everything out in my head as to what is happening here.

Q. After the shooting, did your dad and Greenawalt come back to the Mazda?

A. Yes.

Q. Which one came first?

A. Greenawalt came first.

Q. Did he say anything after he got back?

A. He told us to load up.

Q. What do you mean by "load up"?

A. To get into the car, the three of us, get in the back seat.

Q. Did you hear any more shots?

A. There could have been one or two more after that. I couldn't see, because it was too—there was two in back of me, and I was inside, and you couldn't see out of the rear window because of all the stuff piled up in back which was blocking off the view.

Q. And then did your dad come back?

[22] A. Yes.

Q. Then what happened?

A. We all loaded up, and we were already in there, and dad and Randy got into the car.

Q. Did anybody say anything about the shooting?

A. No, it got real quiet. Everybody was, I think, everybody just had run that through their heads, what had happened here, and it took me a little while to grasp on to it, you know, because it just happened all of a sudden, you know. It just kind of set me back, it made me start thinking.

Q. Did you then leave?

A. Yes.

Q. Where did you go?

A. I can't say. We went back out to the highway and headed off in the same direction we were going.

Q. As you were leaving, did you see anybody outside of the car?

A. As we were leaving?

Q. Yes, or just before you left?

A. Just before we left, everybody was in the car.

Q. So when you left do you think everybody was in the car then?

A. All five of us were.

Q. No, I mean of the Lyons and Teresa?

[23] A. Like I said, I couldn't see because it was two in back of me sitting in the car, and the car was facing in an opposite direction, and above that there was all that stuff piled in the back seat and I couldn't see out the rear window.

Q. Okay. So you all got into the car and you left?

A. Yes.

Q. Where did you go?

A. We went back out onto the highway. I guess it was north, to the woods, and all that stuff.

Q. Was there a .45 fired?

A. Out there?

Q. Yes.

A. No, not that I know of. The only thing that was fired out there from the sound of it were the shotguns.

Q. Okay. Then you left and you went up north?

A. Yes, I believe so.

Q. Do you know where the next place was that you stopped?

A. Sherwood Forest, probably.

Q. Near Williams, Arizona?

A. Yes. I guess it is. It was up in the trees. We camped out there for a while.

Q. Did you take anything from the Mazda or from the people in Quartzsite that you took up to the [24] mountains with you?

A. The Mazda.

Q. Any personal property like wallets, or purses, things like that?

A. I think there was some money, two hand guns, a .38 and a .45. I don't remember just what they was.

Q. Did you ever look at any of the ID's?

A. The ID's?

Q. Yes.

A. Not while I was going through. I was unloading.

Q. What about later?

A. I never did look at anything, really, because I didn't want to be reminded of it.

Q. Okay. After you got to Sherwood Forest near Williams, that is near where your Uncle Larry lives; is that correct?

A. Yes.

Q. How close did you get to his house?

A. The campsite?

Q. At any time?

A. Well, one time, but where, in distance, enough distance to see the house, but we never kept close to it.

Q. Where did you have your camp?

A. Quite a distance away from his house.

Q. When you said up at the camp, did any of you [25] ever leave the camp?

A. Yes, me and Donny did.

Q. Where did you go?

A. We went into town to get some groceries, some spray paint, and I think that's possibly about it.

Q. That was in Williams?

A. Yes.

Q. Do you know which store you went to?

A. The name of it?

Q. Or the description of it, the location, or whatever?

A. Well, the grocery store was set away from the street, and the parking lot was out front. Right across catty-corner there was a hardware store where we got the paint. I believe there was some railroad tracks right behind the hardware store, too.

Q. What kind of paint did you buy?

A. Primer gray.

Q. Then you took that back to camp?

A. Yes.

Q. What did you do with it?

A. We painted the Mazda.

Q. What color was the Mazda before you painted it?

A. I believe it was a red color, or an orange color, reddish-orange.

[26] Q. Do you remember what the inside of it was, what color it was?

A. The interior?

Q. Yes.

A. Black, black and like a red flannel, the seats, you know, the in seams.

Q. Then you made camp there in Sherwood Forest?

A. Yes.

- Q. And did you leave Sherwood Forest?
- A. Yes.
- Q. And where did you go then?
- A. Well, I think we ended up on the outskirts of Flagstaff.
- Q. Whereabouts in Flagstaff?
- A. Well, I don't know Flagstaff that well. Probably on the north side of Flagstaff.
- Q. Was it anywhere near a store?
- A. Yes, a store, there was this little convenience store.
- Q. Do you remember the name?
- A. No, not really, it had some gas pumps outside, a convenience store.
- Q. Did you ever go in the store?
- A. When we buy some groceries.
- Q. Did you do that the first day you were there?
- [27] A. Yes.
- Q. Was it in the morning or the afternoon?
- A. I am not really sure, I'm not really sure when it was. We had just set up camp and it was still daylight, I would say, the afternoon.
- Q. Who went to the store with you?
- A. Me, Rick and Randy.
- Q. Did you drive the Mazda?
- A. Yes.
- Q. And parked it at the store?
- A. Yes.
- Q. And you bought groceries?
- A. Yes, expensive groceries, too.
- Q. Then where did you go?
- A. After?
- Q. After you left the store?
- A. I believe we went back to camp.
- Q. Can you kind of give me a description of the way the camp looked?
- A. It is on the opposite side of the street, a store by the north side of the street there, and it is a dirt

- road, it is curving a lot, and it had some houses and all this. It was shut off, it was catty-cornered to the driveway to the house, and there is some mountains on it.
- [28] Q. Did you go across there into some pine trees?
- A. Yes.
- Q. Did you set up another camp there?
- A. Yes, that was the camp that was set up.
- Q. How long did you stay there?
- A. Well, a couple of days.
- Q. Okay.
- A. We got there in the afternoon and we got a four-wheel drive the next day. I think we left there at night.
- Q. Can you describe the four-wheel drive?
- A. A bluish Chevy pickup with no grill.
- Q. With no grill?
- A. No grill.
- Q. A blue Chevy pickup with no grill?
- A. Yes.
- Q. After you did that, what did you do with the Mazda?
- A. Took it down to the woods a ways and then buried it.
- Q. How did you buy it?
- A. Dug holes for the wheels to go right down into, so the bottom of the car would sit flush on the ground, and then cut down small trees and whatever.
- Q. Did you take anything out of the Mazda for when [29] you left?
- A. The seats and the radio.
- Q. What did you do with the seats?
- A. The seats went into the truck, because it is hard to ride five people in a camping truck.
- Q. Did you take the seat belts?
- A. I don't remember. They could have been taken, but I don't remember. Yes, we did take them, because we tied down the stuff.
- Q. Okay. Then you left that camp, and was it day or night then?
- A. The camp?

Q. Yes.

A. From the truck, it was evening.

Q. Was it early evening or late at night?

A. The sun wasn't down too long, so it was light.

Q. Do you know where he went then?

A. Well, at the time, like that time, I wasn't sure where we went, but I found out later.

Q. When you went to Flagstaff is there anybody that you were going up there to see?

A. Randy looked for Cathy, they were talking about Cathy, and Randy was supposed to be going to talk to her or something, and then we made camp and went and got groceries, and came back and they talked about it some [30] more, about going and talking to this Cathy, and him and Donny left. I think Cathy was his wife or something, Randy's wife, I think, and him and Donny left to go to her house, and then they came back later on.

Q. All right. Then you left your camp, right, driving the pickup and you left the Manda partially buried and covered up?

A. Yes, sir.

Q. When you came back into Arizona, do you remember when that was?

A. I started—I'm just forgetting about the time of the dates, but it was around—

Q. Around the 11th of August?

A. I could go back from the roadblock.

Q. When you came back to Arizona, then you came down to Casa Grande; is that right? This is after you got in Casa Grande, or got near Casa Grande, did you then run into a roadblock?

A. Yes.

Q. What happened then?

A. Well, like I was sleeping before, and we came up on the roadblock and I had just woke up a few minutes, so I am back there and I heard Donny say that there was a roadblock up there, so I crawled up to look

and Donny panicked and he ran it, he ran that, and then they shot [31] on us, like that, you know, but when they come up on in Court here and said that we fired on them first, well, I can't remember that. I would have heard it, I think, but I never heard no shots come out of that van until after another shot was fired.

Q. Did you see your dad or Randy shooting from the van?

A. I saw my dad.

Q. Did you see Randy shooting?

A. Well, my dad had called Randy back there, and the rifle, my dad was shooting it, it jammed, he wasn't too good with a rifle, I guess, and I was laying down back in the truck, or the van, whatever. He could have been shooting, you know. There's good possibility that he was shooting.

Q. Right after that, a short time after that you guys were captured; right?

A. Yes.

Q. And were the shotguns and the other weapons in the van the same weapons that you used throughout the whole thing?

A. Yes, except—not what we started with, except for the .45 and the .38 that we picked up, from those people up by Yuma, but the rest of them were ours.

Q. Didn't Randy get a couple more weapons in [32] Flagstaff?

A. Yes, a rifle.

Q. But the shotguns were yours?

A. The shotguns and the better part of the handguns.

Q. They were the same weapons that you left Florence with two weeks earlier?

A. Yes. Except for the ones that Randy got.

Q. If you saw those weapons again, could you identify them?

A. More than likely.

Q. Okay. One more question, when you had that second flat tire, or that blowout down near Yuma, did a hubcap come off of your car then?

A. It could have come off when the tire blew. It wasn't when I looked at it, but I can't say for sure that it came out at that time, because I'm not—I was no longer driving.

Q. What color was the Lincoln?

A. White.

Q. What color was the interior?

A. White and black, I think the dashboard was black.

MR. BRAWLEY: Okay. I don't think I have any more questions.

[33] (The statement was then concluded at 7:50 P.M.)

(Certificate of Official Court Reporter omitted in printing)

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA

No. 9299

(Title Omitted in Printing)

[Filed May 14, 1979]

SWORN STATEMENT OF
RICKY WAYNE TISON

Statement Taken By: Mr. Tom Brawley
Detective Lieutenant
Commander-Detective Division
Flagstaff, Arizona

[2] January 26, 1979, 4:40 P.M.
Division I, Superior Court, Pinal County

MR. BRAWLEY: Okay. It is 4:40 on the afternoon of January 26, 1979, and this is an interview of Ricky Wayne Tison.

Present are Mike Irwin, Yuma County Attorney, and Mike Beers, Ricky's attorney.

I am Lieutenant Tom Brawley.

RICKY WAYNE TISON, having been duly sworn according to law, testified as follows:

EXAMINATION

BY MR. BRAWLEY:

Q. Ricky, you have been advised of your rights; correct?

A. Yes.

Q. And you understand them?

A. Yes.

Q. And your attorney is present with you at this time?

A. Yes.

Q. I would like to start the questioning with you explaining what you did once you left the prison, and when I am speaking of "you" I am speaking of you, Donny, [3] Raymond, your father, Gary, and Randy Greenawalt.

A. All the way through it?

Q. Just briefly, go from the prison.

A. Okay. When we left the prison, we went to the hospital in Florence and changed cars.

Q. This was on July the 31st of 1978?

A. I would suppose so.

Q. All right.

A. Then we left the hospital and we went up onto Attaway Road, and all the way going down to Hunt

Highway, and then from there, oh, we just went through several interchanging roads.

We went through the south, far south side of Phoenix, and went on through another town. I don't recall the name.

Then we—from there on we just hit several other roads. We were then cruising for a while on a dirt road, and then came to this abandoned house. That is where we made camp for a couple of days.

Q. Let me ask you a question here: You said when you left the prison you switched vehicles. What vehicle did you leave the prison in?

A. The Galaxie, Ford Galaxie 500.

Q. And you switched vehicles to what?

A. To a Lincoln Continental.

[4] Q. What color was the Continental?

A. White.

Q. Do you remember what kind of license plates it had on it?

A. New Mexico.

Q. Was it a two door, four door?

A. Four door.

Q. And this was the vehicle that you were driving when you arrived at this house that you were talking about?

A. Yes.

Q. Explain to us what you did at the house?

A. We set up camp there for a couple of days. That is, one time me and Ray went out and we did purchase supplies at a little store. As a matter of fact we went to a couple little stores. I couldn't give you the name of either one of them. One is located by the freeway. We—okay, then on our return back from there we knew we had a slow, leaky tire. On the return back we noticed it was down farther, and that is when we changed to the spare tire. And then one night after a couple days we left there.

Q. Can you describe the house before you left?

A. Condemned. Real bad shape.

Q. An old house?

[5] A. Yes. It was old. It was an old—what used to be a fence there, still standing, part of it wrecked up. There were weeds growing in and out of it. All the electric wires and so forth had been disconnected from the place. There's a big tin like barn or shed there which we kept the car in, and there was just desert surrounding it. There are houses down a ways down the road a ways about a mile, at the most.

Q. This house is off of a dirt road south of Phoenix?

A. Yes, yes, I believe so.

Q. Okay. How long did you stay in the house?

A. A couple of days, two, three days.

Q. When you left the house, was it day or night?

A. Night.

Q. How many of you left the house?

A. All five of us.

Q. Where did you go?

A. Well, we went down that dirt road. I couldn't really give you—I would say that we went west on this road, you know, I couldn't guarantee that is the way the road runs, though, east and west, but I would say we went west on it. Then we went up quite a ways and then made—we went down, made a right on this other road. Okay. It was dirt. Then it turned into a paved road a [6] a little further ways, and then it turned off and there was a gin standing off to the left side of that road at that corner where it curved, but we went straight on and it connected to another dirt road. Then we stayed on that dirt road, oh, quite a long time.

Q. Did you eventually come to pavement?

A. Yes.

Q. And what was that road, the paved road?

A. The one I just described?

Q. When you got off the dirt road?

A. After we got off that dirt road, okay, we got on to this highway that my dad considered—he called it a truck route. We went down, and when we got to this highway we made a right on it, and went down a little ways.

Q. Do you know how far down you were?

A. No, I couldn't say. It was a ways, you know.

Q. What occurred then?

A. I would say at least a couple of miles.

Q. After you drove a ways, what occurred then?

A. Okay. We had a blowout, and we went out and checked the car and we seen it was pretty well destroyed, the tire.

We did pull the tread off the tire because it was bumping against the car quite a lot.

[7] Q. Didn't you have a spare?

A. No. The spare was the first tire we changed.

Q. What did you then do after this second flat?

A. Well, we tried to cruise on it a little ways, and didn't get very far at all, so we stopped, and, you know, started, you know, wanting to signal somebody down, flag somebody down and take their vehicle.

Q. Whose idea was it to flag somebody down?

A. Well, my old man mentioned it, but we all more or less figured we were going to have to get us a vehicle or get a tire or something.

Q. So what did you do?

A. We flagged—okay. Me and Donny got off, I believe it was the right side of the road as the car was facing that way, off to the right side of the Lincoln off the road, and my dad and Randy got off to the other side, and Ray was standing at the Lincoln with the emergency flashers on trying to flag down a vehicle.

Q. Were you armed at that time?

A. Yes.

Q. Was everybody armed?

A. Yes, everybody except Ray.

Q. Can you tell us what each person had, what weapon they had?

A. I had a .45 revolver. My dad had a .16 gauge [8] Browning Automatic, and Randy, I believe, had a .20 gauge Automatic—nothing automatic, a pump, sorry. As far as Donny goes, I couldn't tell you exactly what he had. He was definitely armed.

Q. Were these shotguns that you described, were they cut off?

A. Yes. They were all sawed off to shorten the barrels and the stocks.

Q. As you were standing on the side of the road, what occurred next?

A. Okay. Then one vehicle—we tried to flag down one vehicle but it went on by. We flagged down another vehicle and it slowed down up in front of us a little, turned back, came back and then turned around again facing the back of the Lincoln.

Q. Could you tell what kind of vehicle that was?

A. At that time, no. I had no idea what it was.

Q. Then what happened?

A. That, okay, the man, Mr. Lyons and his wife got out of the car to advance forward toward Ray to find out, you know, what the problem was, and that is when me, Donny, and Randy, and dad ran from the side of the road toward, coming up, coming from the rear of their car toward them, and that is when we took them at [9] gunpoint.

Q. How did you do that?

A. How?

Q. Take them at gunpoint? How did you do it?

A. We just had the guns out.

Q. Okay.

A. Did you want—okay. Mrs. Lyons went back and she was—she wanted her child, and my dad was coming up from the rear there, and my dad had the shotgun and it was levelled off at her, and he, you know, she kept advancing forward, and then at that time, you know,

I was getting a little worried, but my dad let—she explained that she—she stopped and explained, she said what she wanted, and dad let her get her child, and about this time the Tyson girl was got out of the car, and she was up in front, also, with the rest of the Lyons family. Then at that time they were put back in the Lincoln, and Ray and Donny were in the Lincoln, and Ray was driving, and Donny was covering the people. Me, and dad, and Randy were in the Datsun, and we followed them. We turned around and went back to this road that we passed earlier.

Q. Just a minute. You said that you guys were in the Datsun?

A. Yes, me, dad, and Randy.

[10] Q. Are you sure it was a Datsun?

A. Well, no, I mean, I know what it is now, but at that time I had no idea what it was.

Q. I think that we have been talking about it being a Mazda.

A. I'm sorry, a Mazda.

Q. Was it in fact a Mazda?

A. Yes. Sorry.

Q. Then what did you do?

A. Okay. We went back to this road that we did pass earlier. We went down this road and it was a dirt road.

Q. Do you mean you turned around from where you were at and went backwards?

A. Turned around going the opposite direction we were headed, and went to this road which is just a little ways down from where we were stopped at the time they left onto that road.

Q. Did you turn right or left?

A. Turned left onto that road.

Q. Okay.

A. And then we went on down to another dirt road that we approached, just happened to be on this, and we just had been on it a couple minutes at the most. There we pulled down this road just a little ways and we backed

[11] up the cars together, and the Lyons family were escorted out of the Lincoln and more or less put off to the side of the Mazda lights, so the lights of the Mazda were on them, and kind of off to the side, and then at that time Donny was covering them.

Q. Who drove the Lincoln?

A. Ray did.

Q. Who else was with him?

A. Donny.

Q. And the rest of you were in the Mazda?

A. In the Mazda, yes.

Q. Okay.

A. Okay. Then I was getting the stuff up in front of the Mazda there, going through it, checking it out, getting, you know, what they had, if they had money, or so forth in it.

At that time, I am not sure who was going through the back, but there was someone going through it. Okay. Then my dad came back to me and said "Just get all that stuff together and don't worry about it right at the moment," so at that time I did, and I poured everything, all the contents in there into a purse, a fairly good sized purse, and then I went back and started helping Ray taking stuff out of the back of the Mazda, so forth, and in the process of taking the stuff out of the Lincoln [12] and just switching everything around.

Q. When you were taking stuff out of the Mazda did you take a wallet, or a purse, or any identification?

A. Yes.

Q. And from that identification were you able to tell—

A. I did. I was able to tell the Lyons family. At the time, you know, there was, you know, we didn't know the Tyson girl, we didn't have the identification, not at that time.

Q. You didn't know her name?

A. No, not at that time, but then, what I was doing in the front part there, someone discovered two weapons

in the back of the Mazda, a .45 Colt Automatic and a .38 airweight Smith and Wesson, so after that, you know, after helping Ray switch everything back around in the cars and so forth, that is when dad walked off into the desert just a little ways away from us and found a fairly good spot, you know, I guess, to park. Well, I had no idea why he went out there at the time, but when he came back he told one of us to get in the Lincoln and drive it over there.

At that time Donny got into it and drove it on over to the—to the spot my dad located, and at that time Donny was coming back and my dad was going forward. The [13] vehicle was still running. The lights were still on, and my dad shot it several times in the front of the radiator to stop the engine. Okay. Then when dad came back we were more or less placed kind of from the Mazda, and the Lincoln off to the side, and too, you know, more like guard duty, and then dad had escorted the Lyons family toward the—toward the front of the vehicle, the Lincoln, and at that time while we were standing in front of there Mr. Lyons made a statement that he—he asked him, he said something to do with "Jesus, don't kill me." I don't quite remember the exact words he used.

Q. He said that to your dad?

A. Well, it was just, I would say, more or less directed at everybody. Okay. Then dad—we, okay, after this dad said he was thinking about it. He said something like "I'm thinking about it," you know, I am thinking about it, you know, he was thinking about it real hard if I want to do this or not, and at that time he said "Go back and get some water." Dad was pretty upset at that time.

Q. Who did he tell to go back and get water?

A. Nobody in particular. Donny went back and got it.

Q. Donny went back?

A. Yes.

[14]. Q. Where were the Lyons at that time?

A. At that time they were still up in front of the vehicle, I believe.

Q. They were in front of the Lincoln?

A. Yes.

Q. And where was Randy?

A. Randy was just off toward the—he was in front of the Lincoln, but off to the left side of it.

Q. Where was Raymond and where were you?

A. We were on the right side, more or less farther in front.

Q. Did you all still have weapons at that time?

A. Yes. Everybody had a weapon at that time.

Q. So your dad wanted some water?

A. Well, you know, because—all right. Mr. Lyons, at the time just said "Leave us some water." Okay. My dad, that is the reason he sent back one of us to get water. He said "Go get the water," and Donny went back and got it.

While Donny was gone these people were escorted into the Lincoln and sat inside.

Q. What do you mean by escorted into the Lincoln?

A. You know, they went more or less between us into the Lincoln. We were still out in our positions, and dad kind of put them in the Lincoln, opened the doors [15] and told them to get in.

Q. Okay.

A. Then, okay, Donny was having problems finding the water jug because the back of the Mazda was pretty full with stuff, so that is when me and Ray went back and tried to help him get the water, because dad called back again, you know, a little higher to—this time wanting to know where the water was, so when we did get it and filled the jug up, me and Ray came back with it. At the time we were headed toward the Lincoln to give it to the Lyons family, and dad told us to come to him because he wanted a drink, so at that time we took it. He took the jug, took a drink of it, and he had the jug.

Okay. Then me and Ray went back to our, more or less our ground where we were before, you know, watching.

Q. How far were you and Ray from the Lincoln?

A. I couldn't give you an exact estimate at all, you know. It was farther than this room, you know.

Q. Were you close enough that you could see what was going on?

A. Yes.

Q. Okay. Then what happened?

A. Then—okay, Randy and dad went back to the back of the van, or the Lincoln, I'm sorry, and there they just conversed. I didn't hear what they were saying, [16] if they were saying anything. I am sure they were. At this time they came back around to the sides of the Lincoln, my dad was on the right side and Randy was on the left, and at this time I noticed—their shotguns in their hands raise up, and they started firing. I seen the flashes.

Q. Did they both have a shotgun?

A. Yes. My dad had the .16 gauge and Randy had a .20 gauge.

Q. Could you see them both fire?

A. Yes.

Q. Were the doors open or closed at that time?

A. Closed, I believe.

Q. Do you know if the windows were open or closed?

A. I couldn't say for sure.

Q. How many shots were there?

A. Several. I couldn't give you an accurate estimate at all.

Q. Did they both fire several shots?

A. Like I said, I seen a few flashes from each weapon, I couldn't say exactly how many times each one of them fired or what.

Q. Were you able to tell that both Randy and your dad were both firing?

A. Yes.

[17] Q. Okay. Then what happened?

A. Okay. Then, that is when, well, when this started me and Ray went back to the Mazda, you know, when they—we threw the rest of the stuff back into the vehicle, and that is when Randy came back, and dad was still at the Lincoln, but at this time I noticed he was on the other side of the Lincoln and firing into it. I heard a couple more shots from, you know, the Lincoln. Then after that we all got into the Lincoln and—or into the Mazda, I'm sorry, and went back the way we came, going on the same direction when we hit the truck route heading in the same direction that we were before we had the flat.

Q. Do you know if all of the Lyons and Teresa Tyson were in the front or the back of that Lincoln?

A. I can't say for sure one way or the other where any of them were.

Q. After they finished shooting them then what happened?

A. We took—we all got into the Mazda and headed back in the same general direction, you know, the direction that we came down the dirt road in, and got back on the truck route and made a right onto that route, still heading in the same direction.

Q. Did you see if anybody was outside of the [18] Lincoln when you left?

A. I didn't see anybody outside, no.

Q. When you left there, do you think they were all in the vehicle?

A. Yes. I'm pretty sure they were.

Q. Okay. Then what happened?

A. Okay. Then we were—we headed up to, kind of up north. It was kind of cool, and we got into the forest, and there we made camp. We stayed at this one place, at this place, and Donny and Ray got into the Mazda and went to this Williams's store, a town that is close by where our camp was.

Q. Williams, Arizona?

A. Yes.

Q. Okay.

A. And there they purchased some primer grey spray paint so we could paint the Mazda, and they also purchased some supplies, and while we were at the camp, at this one camp, we went through the stuff that was in this purse that I put in, all the stuff that I put into that purse, and at that time after having gone through it there was money still in the purse, and after we left, okay, when we were getting ready to leave there, it was because a vehicle that went by on it, and we figured this road was too well used. So me and my dad [19] went out looking for a new campsite, and at this time he told Donny to put rocks into this purse and take it over to the pond and throw it in, and we went down to—we went all through this forest for quite a ways, and then came back and went down this other little stretch. It was a road that is not really used for anything. At one time woodcutters used to use it a lot to cut trees and so forth.

At this particular camp, that is when a sheepherder came by and that is when we took off. Okay. That is what made us decide to take off from there.

We went just through the woods a little ways, and I couldn't tell you what roads or anything, but we went into another meadow where a little sheepherder's shack stood, and that is where we camped for a couple more days.

Q. To go back down to the Lyons, as you were unloading the equipment from the Lincoln and putting it in the Mazda, where were the Lyons and Teresa Tyson?

A. They were still standing in the light of the Mazda.

Q. They were standing in the headlights of the Mazda?

A. Not in the front of it, off to the side of it, but in the light, so the lights could catch it.

[20] Q. Were any of you with them at that time?

A. Donny was, yes.

Q. Donny was. Did you ever see a little dog?

A. Yes.

Q. Do you know whose dog it was?

A. Just from the reports that I read, it was the Lyons' dog. At the time I had no idea whose dog it was. It did—the girl, Teresa Tyson, had the dog.

Q. Did she carry the dog or was it following her, or what?

A. Well, she was carrying the dog everywhere she went.

Q. Okay. Did you take anything else from the Mazda?

A. There was a few, probably a few other articles that were taken. I couldn't give you a count of what they were or anything.

Q. Did you take the two weapons that were in the car, the .45 and the .38?

A. Yes.

Q. After you left the Lyons, was there any conversation among all of you about them?

A. Everybody was pretty quiet. Nobody was saying much of anything.

Q. Did you dad and you later have a conversation [21] about Randy's actions while the shooting was going on?

A. Dad made the comment to me later that Randy—you know, I couldn't tell you the exact words, the exact words he used, but he said that Randy wanted to kill those people.

Q. Did he give you the impression that it was Randy's idea to kill them?

A. Yes, he gave me that impression, yes.

Q. But you don't remember him actually saying that?

A. No, I never—no, he didn't.

Q. And what did you do with the purse and the identification of the Lyons?

A. It was filled with rocks and dumped into a pond.

Q. And that pond was near Williams?

A. Yes.

Q. Okay. Then what did you do with the Mazda?

A. We—okay—this was after we left this last campsite at the shepherd's.

Q. Does that place—is that known to you as Sherwood Forest?

A. Yes.

Q. You left there then and where did you go?

A. We went through a bunch more back roads, but we [22] ended up into a forest that I suppose was near Flagstaff. I had no real knowledge of it until later on.

Q. Did you set up camp there again?

A. Yes, and there was a truck purchased, and two other weapons that were gathered up, a rifle and a .357, and we buried the Mazda there.

Q. How did you bury the Mazda?

A. Well, we drove it back into the woods a little ways and there we dug holes in front of the tires and pushed it on into it, into the holes so the bottom of the car would sit level with the ground, and then we went around cutting trees, little immature trees and covering the Mazda with it.

Q. Did you take anything from the Mazda?

A. Yes, we took the two bucket seats out of it so we could position them in the back of the truck for two people to sit.

Q. Anything else?

A. We took the shoulder harnesses, the seat belts out for straps so we could tie down the stuff, you know, tie down all our stuff.

Q. What about a radio?

A. Yes, I believe there was a radio taken out, too.

Q. What color was the Mazda?

[23] A. Originally?

Q. Originally.

A. Kind of an orangish-red color, I think. I am pretty sure, you know.

Q. Do you know if it had Arizona license plates on it or not?

A. I think, yes, I am pretty sure it had Arizona plates on it.

Q. What color did you paint it?

A. Primer grey.

Q. If you were to see those guns again that were used in killing the Lyons and Teresa Tyson could you recognize those guns?

A. Yes.

Q. You had personally seen each one of those guns so that you can recognize them?

A. Yes, I personally worked on every one of the guns, and seen them. I handled them all.

Q. What do you mean by worked on them?

A. I fixed things that went wrong with them, and I cut them down.

Q. Okay. After you buried the Mazda did you then leave?

A. Yes, that is right after that we did leave.

Q. And at that time you were driving the blue [24] pickup?

A. A blue Chevy pickup, yes.

Q. Then several days later you came back into the Casa Grande area; is that correct?

A. Yes.

Q. And do you remember what day that was?

A. No, I couldn't tell you. I supposed it was August 11th, because is what has been on the record, but at the time I had no knowledge of it.

Q. And then at that point you ran a roadblock; is that correct?

A. Yes.

Q. And there was some shooting, and then eventually you were captured?

A. Yes.

Q. Okay. The guns, the shotguns and the other weapons that you had at that time that you were captured, were those the same guns that you had at the time of the shootings in Quartzsite?

A. Yes, except the rifle, and the .357.

Q. Except the two additional guns?

A. Yes.

Q. And the two that came from the Lyons?

A. Yes.

Q. But the shotguns were the same guns?

[25] A. Yes.

Q. When you left Quartzsite you say that you thought everybody was still in the car?

A. I was pretty sure everybody was in the car.

Q. Did you think that they were all dead at that time?

A. Yes, at that time, yes.

MR. BRAWLEY: I don't think I have any more questions.

(The statement was then concluded at 5:13 P.M.)

(Certificate of Official Court Reporter Omitted
in Printing)

IN THE SUPERIOR COURT OF THE
STATE OF ARIZONA
IN AND FOR THE COUNTY OF YUMA

No. 9299

(Title Omitted in Printing)

STATEMENT OF RAYMCND TISON

[2] THE STATEMENT OF RAYMOND TISON was taken on February 1, 1979, at 3:00 o'clock p.m. at the offices of the Diagnostic Center, Arizona State Prison, Florence, Arizona, before Janet Emmert, Official Court Reporter, Pinal County Superior Court, Division II, Florence, Arizona.

[3]

Arizona State Prison
Florence, Arizona
February 1, 1979

RAYMOND TISON,

was examined and testified as follows:

EXAMINATION

BY MR. BROWN:

Q Okay. Raymond, it's my understanding that you have entered into a plea agreement with the State of Arizona, and that one of the conditions of that plea agreement is that you will testify in Randy Greenawalt's trial, is that correct?

A Yes.

Q Okay. The reason we are here today is for me to interview you, because I've never interviewed you before because you have been a co-defendant.

Let me tell you before we start that, of course, Harry is here to watch out for your rights. But if at any time you don't understand a question that I ask or you don't think the question is fair in any respect, why sneak up and let's get it cleared up then. If you don't say something, I'll assume that you understand the question. Okay?

A All right.

[4] Q Directing your attention to sometime before July 31st, can you tell me when was the first time that you became involved in any way with the plan to break your father out of prison or to release your father from prison?

A Became involved with it?

Q In any way. Discussed?

A Other than knowing that he wanted out or the escape that we did—

Q Okay.

A See, that escape that we did, that wasn't—that was like planned the day before.

Q Okay.

A We had set it up the week before.

Q That is what I am trying to figure out, okay? This particular escape.

A Yes.

Q Okay. When did you first start talking about it, or working on it, or what?

A Well, we talked about it with dad on that Saturday, before that Sunday, that one there, and then me and Ricky had thought about it earlier in the week. Then dad thought about it that same week and we discussed it Saturday.

Q When you say Saturday, is that the day before?

[5] A Yes.

Q The very day before, not—

A Yes.

Q Not the week before?

A Yes. That day.

Q Okay. How were you able to arrange all this within one day?

A What do you mean?

Q Hadn't there been some planning before this and some assembling of guns?

A Not for this. There had been other—you know, dad had been wanting to get out for over a year.

Q Yes.

A And he was planning other ways. But like this here—you know, that is when we started collecting the stuff. But this here, you know, we had all the stuff already.

Q Okay.

A We didn't think about that, you know, till the week before, and we discussed it with him the day before.

Q Was this a separate and distinct plan from any that had ever been discussed before?

A Well, what really made it separate was that me and Ricky and Donnie was getting involved in it. Before that, he didn't want to involve us in nothing. Me and [6] Ricky had thought about getting involved before, you know. You know, we had told dad about it, but he didn't want us involved before.

Q Okay. Now how did you first learn that Randy Greenawalt was to be involved in the escape?

A Well, dad said if he escaped he would be taking him with him, and he pointed him out once or twice while we were in the visiting room there.

Q How long was this before the escape?

A I'm not really sure at this time just how long before he pointed him out to us, you know.

Q Was it over a month?

A Probably.

Q Okay. Do you know what Randy Greenawalt was supposed to do to assist in the escape?

A This escape here?

Q Yes.

A Yes.

Q What was he supposed to do?

A It was discussed Saturday. He was supposed to be up there in that yard office.

Q And who was in on this discussion?

A Ricky, Donnie and dad.

Q Where did the Lincoln come from?

A Joe.

[7] Q The guns also came from Joe?

A Yes.

Q Okay. And was Joe a part of the general conspiracy to break your dad out?

A I would say he was in on the conspiracy. He wasn't in on the planning.

Q Let me ask you this:

To the extent that he was told that certain weapons were needed?

A Well, see, dad had talked to him. It was him and dad. He came down and saw dad. I don't know what their arrangement was, but, you know, I think dad would have told him what the stuff was for.

Q Let me ask you this:

You don't know what agreements your dad had with Joe?

A Not offhand, no.

Q Have you ever said that you know?

A No.

Q Have you ever made a guess to anybody in a statement?

A About what their plans were?

Q Yes.

A No.

Q Going back, you say your dad had been planning [8] the escape for about a year, is that right?

A Yes.

Q And Joe was assisting him in these plans, is that correct?

A I wouldn't say, you know, going really and assisting. He was supplying stuff.

Q Okay.

A You know, Joe, he is into these drugs and all this, you know. I figured that had something to do with the deal.

Q Let me ask you this:

Joe supplied the car, is that right?

A Yes.

Q He knew what it was going to be used for, is that right?

A I would think so.

Q Okay. He supplied some shotguns?

A Yes.

Q Did he supply any other guns?

A One handgun, I believe.

Q Okay. And he gave those directly to you, didn't he?

A Yes.

Q And at that time did he know what they were going to be used for?

[9] A Probably. You know, I can't say for sure because that was him and dad setting that up.

Q Okay. Did you have any discussion with him when you got the guns and say, "We are going to break dad out"?

A I—I don't like Joe.

Q Yes.

A You know, I don't go out and meet the man or nothing. I avoid him if I can avoid him.

Q Okay.

A But dad just asked us to go pick these up for him.

Q Okay. Now you came to the prison and the escape was made from here, is that right?

A Yes.

Q Okay. And that was on the morning of the 31st, on Sunday morning?

A Yes.

Q Okay. Where did you go from the prison

A To the hospital.

Q You went to the hospital?

A (Witness nodding head.)

Q Had you parked the Lincoln at the hospital earlier?

A Yes.

Q When you brought the Lincoln to Florence, who [10] brought the Lincoln to Florence?

A Me and Donnie.

Q And when did you bring it to Florence?

A That morning.

Q What time?

A Well, by the time we got down there, it was just a few minutes before eight I think when we finally did get down here.

Q Okay. And where did you drive in the Lincoln in Florence?

A To the hospital.

Q How did you get to the hospital? Where did you come from? Casa Grande?

A Phoenix.

Q Phoenix? How did you drive to the hospital?

A We come in on I-10 through the mountains here. You know, come up—I can't remember if we went through the town or came up the back way, though, to the hospital.

Q Let me ask you this:

When you say you went through the mountains, do you know this intersection right out here with the highway and where the prison comes out?

A The one right here coming in in Florence?

Q Yes.

A Yes.

[11] Q Right. Did you go past there?

A I can't remember if we did or not. There is two ways to get to the hospital, though.

Q Well, actually—

A The road runs by there.

Q Let me draw a little diagram. Okay? Can you walk over here?

If you are coming—here is the overpass over to Coolidge. Okay?

A Yes.

Q Okay. And you come down here and you take a turn that brings you into Florence, and it brings you down sort of the main drag here. There is an intersection here.

A Yes.

Q There is another way where you curve over here and you come back down around and you get on this highway that comes by the prison, right?

A Right.

Q There is another way that comes off of here—I forget what that road is—and it comes in like this, is that correct?

A Yes. It runs by the hospital.

Q And the hospital sets out here. Okay. You can't remember whether you came in on—we will call this—

MR. BAGNALL: That is the Adamsville Road.

[12] MR. BROWN: Adamsville. I kept thinking At-taway.

Q (MR. BROWN) Okay. The Adamsville Road, you don't remember whether you came in on Adamsville or what other street. Can you eliminate anyone of the three, is what I am asking?

A Yes. This would be eliminated.

Q Okay.

A It would be either this way or this way.

Q Now by "this way," you are talking about where you take the turn here and come straight into Florence?

A Yes.

Q So you would come down the main street, right?

A I can't say we came down it, but it would either be this way or this way.

Q That is what I mean. I am just trying to identify the second road. Okay?

A Yes.

Q But you definitely didn't go on around and down past the prison, is that right?

A No, because that runs by the canal there and—

Q Right. Okay. We will refer to this as Exhibit A. Go ahead and sit down. I am sorry.

A Okay.

Q To the best of your knowledge, did anyone else drive that Lincoln that morning?

[13] A No. If they did, I don't know about it.

Q And you had the green LTD?

A I? No.

Q Who had it?

A We had it—Ricky had that.

Q And that is what the three of you rode over to the prison in, isn't that right?

A No.

Q What did you ride over here in?

A The way it was, we met Ricky at the hospital. Ricky took me over to the prison.

Q Okay. In what?

A The Galaxie.

Q In the Galaxie?

A Yes.

Q Okay.

A And he went and got Donnie, and then he come back later. You know, like I think it was a half hour later.

Q Okay. But all the times that you came over to the prison, you used the Galaxie, is that right?

A Yes.

Q Now we are pretty familiar with the events that occurred over here at the—

A Yes.

Q —North Annex. You left the North Annex, and [14] what did you do? How did you go?

A Well, we went and switched cars.

Q Okay. How did you get there to switch cars?

A I think we went right through downtown Florence.

Q Okay.

A And then we went there to switch cars and we shot down that road.

Q Adamsville?

A Yes, Adamsville.

Q Okay. Did you ever bring the Lincoln back into town?

A (No answer.)

Q Over here by the prison?

A No.

Q Okay. Go ahead.

A Then we just shot out there and got on that highway there that leads to the overpass to go into Coolidge, shot out there until you come up to the Attaway Road exit there, and turned right down that.

Q Attaway?

A Yes. That is by the Elks Club and the golf course there.

Q Yes.

A Just this side of it.

Q Okay.

[15] A Where it turns into—

Q Which way did you turn there? North or south?

A Right.

Q Right? That would be north, right?

A North.

Q Towards Phoenix?

A Yes.

Q Okay. Where did you go from there?

A Well, Attaway Road ends in Huntsville—or Hunt Highway.

Q Yes.

A And we hung a left there. It would be west, I guess, and it's a dirt road down there and it, you know, curves, and all this. And we went on a few more roads, but I don't know the names of them. I know we came out and got on the freeway at Williams Field Road.

Q Did you ever go to Avondale?

A I don't even know where Avondale is.

Q Let me ask you this:

Did you stop at a shopping center and truck stop?

A No. We never went through no towns.

Q Never at all?

A No. We went by—I think we went by a little community—little houses and all this—at one time, but we never stopped.

[16] Q You didn't stop?

A No, except at stop signs and what not.

Q Okay. Go ahead.

A And then we got on the freeway and I think we went up to—up the freeway up to Baseline Road. And I'm not real sure, but, you know, I'm pretty sure it was Baseline Road, went out on Baseline Road, went quite a ways on Baseline Road, and I'm not sure but I think we either passed the freeway or were on the freeway just for, you know, a minute or two at one time.

And then we went out to a—you know, taking back roads and all this, and staying out of most of the major highways and everything, and went out to the old abandoned house like.

Q Now from this abandoned house, what could you see?

A Mountains.

Q Let me ask you this:

Do you know what a radar installation looks like?

A Microwave installation?

Q Yes, kind of like.

A Yes, I've seen them.

Q Was there any visible, from where you were sitting, on top of the mountain?

A I didn't see any.

Q Okay. What could you see?

[17] A Just the mountains and a lot of desert, and there were some houses, you know, a ways off. You could see those, the outlines and all.

Q Do you know how far you were from Interstate 8?

A No, I can't say how far we would be. I don't think we were that far away, though, you know.

Q Okay. How long did you stay there at that abandoned house?

A I think it was about like two days.

Q Two days?

A Yes.

Q And how many—

A It was two nights.

Q You remember spending two nights there?

A I think it was two nights, and we left on the third night.

Q You left on the third night?

A Yes.

Q Okay. When you left, which way did you go?

A I can't give you directions.

Q Let me ask you this:

When you left, did you drive parallel to the freeway on an access road?

A I don't know. You see, it was at night and like Randy and Donnie did all the driving and dad was [18] navigating. And, you know, like really me and Ricky, it seems like we were just along for the ride, and we were traveling at night and sleeping a lot in the car and all.

Q Do you remember any road signs, or anything like that?

A No. It was all back roads. I remember dirt roads, you know, and sometimes getting on paved roads, and I remember a curvy road somewhere. But right in there is when I fell asleep.

Q Did your dad have a map?

A Yes.

Q What kind of map was it?

A Arizona service station maps.

Q It was a regular service station map?

A Yes.

Q It wasn't a topographical map?

A We had some, but they were the Florence area.

Q Okay. Now how long did you travel before you had the blowout?

A I can't really say. You see, I fell asleep in there. We had one flat tire while we were at that abandoned house and had changed it, and I woke up just a few minutes before we had that blowout.

Q Let me ask you this:

I think somewhere in your statement, did you say—or [19] maybe it was Ricky said—did you and Ricky purchase supplies at a store while you were down there?

A Down at that house?

Q Yes.

A Yes. I think it was a little country store like. We got gas there, too.

Q Okay. Can you describe that store for me? Do you remember what color it was?

A It was set off the highway a bit—the road. I wouldn't call it a highway. It was set off a ways. I think it was white.

Q White?

A Kind of big building, like a little garage set off towards the side.

Q Was it a long, low building? Or was it a pretty square building or—

A It was a square building. I can't remember if it was long or not, though.

Q Do you remember the name of it?

A No.

Q You purchased some stuff there, though, is that right?

A Food.

Q Did you purchase it from a man or a woman?

A I think it was a woman.

[20] Q Can you describe her for me?

A (No answer.)

Q What color hair did she have?

A I think she was a—I think she was an Indian lady, dark hair, dark complexion.

Q Dark hair, dark complexion?

A Yes.

Q Okay. Do you remember what kind of gas it was? Did you see the brand name on the pumps, or anything?

A Brand name? No.

Q Did it have a name on it like Texaco or Shell?

A On the gas pump? I don't know. I didn't fill up the car.

Q You didn't notice any signs?

A The pumps were set off to the side.

Q You didn't notice any signs as you drove up that said some kind of gas?

A No. I think it was like my grandpa's station, the way he runs it, you know, just buy gas where you can get it at.

Q Yes. Okay. Did you ever go into a bar down there?

A A bar?

Q In that area, yes.

A You mean to go in and drink and sit down, and all [21] this, or—

Q Whether you went in to drink or sit down, or whether you went in to get some beer and take it out, or—

A I can't remember for sure, but I think I may have just walked in one, thinking it was a store, and walked back out.

Q Do you remember what the inside looked like?

A No. Just like a bar, I would say. You know, dark, bottles sitting up, a bar, and all that.

Q Did it have a long bar?

A I don't know.

Q A few tables or—

A I don't know. I didn't walk in past the door.

Q I see.

A I just walked in and saw the bar and walked back out.

Q Okay. Then did you drive somewhere else to do your shopping?

A Yes. The store was just down the street from there.

Q Okay. There was a bar and store there?

A Yes.

Q Was there anything else there?

A Houses.

[22] Huh?

A Houses.

Q Do you remember the words "Whispering Sands"?

A Whispering Sands?

Q Yes.

A (Witness shaking head.)

Q Does that ring any bells with you?

A I've never heard the name, no.

Q Okay. There is a bar down in that area that is kind of like you described. That is why I asked.

A No.

Q Okay. You don't know how you got on the road that you had the blowout on, is that right?

A I was asleep. I just woke up a few minutes before. See, we were taking back roads, and all of this, and like they must have changed drivers at one time or another because, when we started out, Donnie was driving. But when I woke up, Randy was driving.

Q Okay. You had the blowout. How far did you travel after the blowout?

A Not too far.

Q Now you described the dirt road that you went down a little later, when you said it was one you passed before.

A Yes.

[23] Q Okay. Which side of that road did you have the blowout on? Did you have the blowout before you got to that road or after you got to that road?

A I think it was just before. That is the reason I saw the road before.

Q Now as you were driving down that highway, did this road we are talking about go off to your right or off to the left?

A Right.

Q To your right?

A (Witness nodding head.)

Q Okay. So you had the blowout just before you came to the road, and then you tried to drive a little farther, is that right?

A Yes, I think so.

Q And then you finally stopped, is that right?

A (Witness nodding head.)

Q Then what did you do at that point?

A I think we got out and looked around, looking at, you know, the tire and all this. My dad had a quick temper, you see, and I think he got a bit hot at this time. He just started cussing a bit, and all of this. And then he come up with a plan—you know, just take another car. You know, flag somebody down coming. Just take another car, you know.

[24] Q Okay. He was the one that came up with this plan?

A Yes, I think so.

Q Let me backtrack.

While you were there at that abandoned house, how did your dad act?

A Like a free man. He was happy.

Q Did he get you pretty well organized and—

A What do you mean "organized"?

Q Well, let me ask you this:

While you were out and down at that house, who was pretty well running things? Was it your dad?

A Yes.

Q Okay. How did he go about doing that? Did he assign everybody duties or—

A No. It was just a—you know, his decision on everything. We were letting him run the show because we figured he knew more about this than any of us.

Q Why did you think that?

A Well, he knew more than me, Ricky or Donnie because, you know, we never done anything like this. I didn't know Randy, but the way Randy acted, you know, he was ready to follow anything my dad said. You know, follow orders.

Q Okay. Have you been in the service?

[25] A No. Donnie was.

Q You have got some idea of what the service is like, though, is that right?

A Yes.

Q Did he pretty well run things like a service establishment? Or did he—

A Yes, I would say so, to a point, you know. He wasn't like some drill sergeant, or nothing like this, no.

Q But it was sort of a semi-military setup? I mean people—

A Yes.

Q —had specific responsibilities and—

A Well, we never did really get around to assigning out responsibilities. We were just all out—you know, I would say we all knew the odds we were playing with here.

Q Did he have somebody stand guard or—

A Yes, we were standing guard, taking shifts.

Q Did he go out and circulate around the area to see if anything was around, or anything like this?

A Well, we could see, you know, a house down the road there. We knew that was there. And I believe it was occupied. I think there was another house towards the back of that one. I think it was like, you know, a couple of miles off. We would see the windmill up there. And I think he did walk around once, him and Ricky.

[26] Q Okay. Let's go back to the—you are there at the side of the road and your dad came up with this plan for getting another car, is that right?

A (Witness nodding head.)

Q And what did you do then?

A Well, I got elected to flag down the car.

Q Okay. How did you get elected?

A Huh?

Q How did you get elected?

A I looked like the least—you know, I—

Q Who elected you?

A I think it was my dad elected me for that.

Q Okay.

A Then they got off to the side of the road, and all I was supposed to do out there was flag the car down, because we figured they knew we were hot, and they see five people, they will jump. So, you know, one person out there, it wouldn't look that bad.

Q How many cars did you try to flag?

A I think there was one attempt before those people stopped.

Q Okay. Now when these people came, what happened?

A I flagged them down. I believe—yes, they passed the car. They just turned around and came back and came to the back of the Lincoln, parked in back of it.

[27] Q Okay. Now at this point you were outside the Lincoln. Where were you?

A I think I was in the rear of the Lincoln.

Q Okay. How many people got out of the car?

A Well, the man got out. He walks up to me and starts talking to me. I'm telling him, you know, I got a flat tire here, and all this other—like the story, you know. And I took him around and showed him the tire.

Q Which tire was it?

A Right rear, I believe.

Q Okay.

A And, you know, just talking to him and—

Q Okay.

A And I think I walked around to the driver's side of the car.

Q Were you watching the other car during this period of time?

A Not really. I had my back to it.

Q When did you first notice the other car again?

A The other car?

Q Yes.

A When they stopped.

Q No, I am sorry. Again. It stopped, the guy got out and you are talking to him. When is the first time you looked back at the other car?

[28] A All right. We were walking on the driver's side of the car, and I had my back to it and I heard commotion going on back there, and I turned around and dad and Randy were there and Ricky and Donnie were coming up, you know.

Q Was everybody else out of the car at this time?

A I'm not real sure. I don't remember seeing anybody, but—

Q Okay.

A But one of the gals could have been out.

Q Okay. Then what happened?

A Well, you know, after I turned around and saw what was going on back there, I asked the man to join them, you know, and just walked back there.

Q Okay. And when you got back there, what did you observe?

A Dad throwing down on them, dad and Randy.

Q Where were they at this time?

A Dad and Randy? I'm not real sure which side of the car they were on.

Q Were they both together? Or were they on opposite sides of the car?

A They got on opposite sides of the car. They were there at one time, but I can't remember just where everybody was positioned at at that time.

Q Okay. You said you saw your dad and Randy [29] throwing down on them. Were the people in the car at this time or were they out?

A Like I said, I think that lady could have been out.

Q Yes.

A One gal. But I saw a silhouette of somebody in the car, so it could have been the gal, from the hair and all that.

Q Okay. And then what happened?

A They got them out of the car, the rest of them, and—

Q When you say "the rest of them," what do you mean by "the rest of them"?

A The one that I saw the silhouette for got out of the car. The lady was out after a while, and there was a baby there, too.

Q Did they reach in and get the baby?

A I think the lady reached back and got the baby.

Q Okay. Then what happened?

A (No answer.)

Q Did any cars, or trucks, or anything go by during this period of time?

A—While we were there?

Q Yes.

A With those people?

[30] Q Yes.

A No, none that I remember.

Q Okay.

A Then the guy was saying something to the effect, you know, that he didn't want no trouble, and all this, and said there was a .45 in the back of his car, and he—I think somebody went back there and got it out then. I can't remember just who.

Q Okay. Then what happened?

A Well, we loaded them up into the Lincoln and took them back down to that road.

Q Did you turn the Lincoln around?

A Yes.

Q On the highway?

A Yes.

Q How far was it back to that road?

A Not very far.

Q Was it more than the length of a football field?

A If it was, it was just over.

Q Okay. So you turned the Lincoln around on the highway. Did you—who drove the Lincoln?

A I did.

Q When you turned it around on the highway, did you go off of the gravel?

A The side of the road?

[31] Q Yes.

A I don't think so.

Q Always stayed on the pavement?

A I'm pretty sure, yes.

Q Okay. You drove it back. I take it was very hard to handle?

A Yes.

Q Okay.

A It wasn't hard to handle because the front tires were still up, but—

Q It just bounced like hell?

A Yes. You go like five miles an hour.

Q Okay. Now you went—then you turned left on the dirt road, is that right?

A Yes.

Q And was the Lincoln—was the Lincoln in front of the Mazda or behind the Mazda?

A In front of it.

Q Where did you go then?

A We went down that dirt road a ways and then turned off to the right on a gasline road.

Q Okay. How do you know it was a gasline road?

A I saw some—you know how those things come out for marking the gasline, pipes coming out and they make like an "H." I saw a little sign up there on it.

[32] Q Do you remember what color the pipes were?

A No. It was dark out there. They are probably white, though. The rest of them are.

Q Okay. You turned down that little road, right? How far did you go?

A I'm not sure just how far. It was a little ways down there, though.

Q The Mazda is following you in, right?

A (Witness nodding head.)

Q Okay. Did you stop right on the road? Or what did you do?

A Yes, we stopped right on the road.

Q And what did they do with the Mazda?

A Backed it up to the Lincoln.

Q How did they back it up to the Lincoln. Did they turn it around?

A Yes.

Q Which way did they turn it? To the left or to the right?

A I don't know. I looked in my rear view mirror and they were backing it up at that time—you know, bringing the rear end up to the back of the Lincoln.

Q Now you transferred the stuff in the Mazda to the Lincoln, or from the Lincoln to the Mazda, or what?

A Yes.

[33] Just switched loads, is that right?

A Yes.

Q Okay. Where were the people at this time?

A Well, they had to take them out of the Lincoln and set them in front of the Lincoln with the headlights on.

Q Were they in the road in front of the Lincoln?

A Yes, I think so.

Q Okay. And who did the switching?

A The switching of stuff?

Q Yes.

A It started out me and Ricky, and Randy came over and started to help. And like he had left once or twice to talk to the guy and come back to the Mazda and help.

Q Okay. Now you finished switching the stuff. What did you do then?

A After switching the stuff over? Dad walked off a ways up into the desert there, and then he came back and told me to drive the Lincoln up here by this bush, or between these bushes, something like that, and back it up in there.

Q Were they big bushes? Little bushes? Do you remember?

A I can't remember.

Q Do you remember if they were as tall as the car?

A They could have been.

[34] Q Did you have to back over any bushes to get where you went?

A I think I backed between two bushes. I don't—you know, I can't say for sure I didn't run over any bushes.

Q Okay. Let's draw another little diagram here. Here is the road and here is the road coming in. Okay? You came—you turned like this and came down the road, is that correct?

A Yes.

Q And the Lincoln was pointed this way, is that right?

A Yes.

Q And you looked in your mirror and you saw the Mazda back up to the Lincoln?

A Yes.

Q How far away from the Lincoln was it?

A Probably four to six feet.

Q Probably four to six feet?

A Yes.

Q Okay. And it was facing the other way at this point, is that right?

A Yes.

Q Back the way you had come?

A (Witness nodding head.)

[35] Q Okay. Now you backed the Lincoln into the desert?

A Yes.

Q Okay. Do you remember whether there was one or two roads?

A For the gasline road?

Q Yes.

A I just remember one.

Q You just remember the one road?

A (Witness nodding head.)

Q So you backed off over into the desert. How far did you go?

A Well, it was up—up in here. I would say about, you know, to here.

Q What did you do? Pull forward and then back?

A Yes, pulled forward and then back like this.

Q Okay. So you pulled forward in the Lincoln. We will make that "L2." And then you backed over into the desert like so?

A Yes.

Q And we will call that "L3." We will call them "M1." And "L1."

Okay. Did the Mazda stay in the same place?

A Yes.

Q Okay. What happened after you backed this over [36] here?

A (No answer.)

Q Had anyone moved the Mazda?

A I don't think so.

Q Okay.

A If they did, I didn't see it.

Q Okay. Then what happened?

A Well, dad followed me out there a ways, walking, and he shot the radiator and all this as I was getting out, walking back over here. You know, just like—

Q Now did you do anything after you got out? Did you take anything off the car?

A I took the license plate and the keys.

Q Okay. Was this before your dad came up and shot it?

A Yes. I don't think he would shoot it while I was there. At least I hope not.

Q Okay. What did you do? You shut it down and took the keys?

A (Witness nodding head.)

Q And you took the license plate off?

A (Witness nodding head.)

Q And there was only one plate on it?

A Yes.

Q On the rear?

[37] A (Witness nodding head.)

Q Was that a New Mexico plate?

A I think so.

Q Okay. And then your dad shot the radiator out of the Lincoln?

A Yes.

Q And do you remember how many shots he used?

A I think it was more than one. I wouldn't know the right amount for it, though.

Q Okay. Where was he standing when he did that?

A Right about here.

Q Okay. So he would be facing the front of the Lincoln then? You are telling me he would be to the front and a little to the right of the front?

A I think he was directly in front of it.

Q You think he was directly in front of it?

A Yes.

Q Okay. Then what happened?

A Well, he shot the Lincoln and he walked back down to the Mazda.

Q Okay. You walked back down over here?

A Yes.

Q Had anybody walked back down over this way?

A I don't think so. You mean me or my dad?

Q I don't know. Did anybody walk over here?

[38] A No. The only ones that were up there were me and my dad.

Q Okay. What kind of shoes did you have on?

A I had work boots on.

Q Okay. Did they have a waffle-type sole?

A No.

Q What kind of sole did they have?

A They are—well, I'm not sure just what kind they were. It was something like these, though, you know, with a—like a waffle-stomper.

Q Yes.

A They were lace-up boots, up to here.

Q That is what I'm saying. Did they have like a square pattern on the bottom?

A A square?

Q Yes, across here.

A I think they were like this (indicating).

Q Okay. Let—just a minute. I'm going to call this Exhibit B.

Why don't you, on Exhibit C, draw me the pattern on those boots.

A It goes like this, I think.

Q Okay.

A And then comes up and—

Q Okay.

[39] A They got them over there if you want to look at them.

Q Okay. Do you know what kind of shoes everybody else had on?

A I think Ricky had Wellingtons on. I think dad had his—a pair of Wellingtons on, the kind you described earlier, about the, you know, the—

Q The square pattern?

A You know, the wavy effect like this. Donnie was wearing a pair like that. They are earth shoes, I believe.

Q Let's put a "1" by the pattern you described.

Do you remember anybody having a pattern that was something like this?

A Oh, with squares?

Q Yes, on the bottom.

A Well, I don't go around looking at people's soles.

Q Yes.

A Really.

Q Okay.

A Randy had the combat boots on, Vietnam combat boots, and dad and Ricky had Wellingtons on. I think Wellingtons are a flat surface like these.

Q Yes. Okay. You and your dad walked back over [40] this way, is that right?

A Yes.

Q And then what happened?

A Well, it wasn't too long after that that we escorted the people up to the Lincoln.

Q Okay. And how did you take them?

A What it was, I think—

Q Well, let's go back.

You had the people in front of the Lincoln, right?

A Yes.

Q I take it when you moved the Lincoln, they moved?

A Off to the side.

Q Okay. Off to the—off to the right as you were driving the Lincoln, right?

A Yes.

Q Okay. Is that where they kept them?

A I think so. When we came back—or else they moved them closer to the Mazda.

Q Okay. Then what happened?

A Well, they escorted them up there.

Q Okay. Who escorted them up there?

A All of us.

Q Okay.

A The five of us.

Q Okay.

[41] A Then loaded them into the back of the Lincoln.

Q Was everybody in the back?

A Yes. The two gals, the dude and the baby.

Q Were all in the back seat of the Lincoln?

A. No. The younger gal was in the front seat, I believe.

Q Was she in the center or on one side or the other?

A I don't know. I never got close to the Lincoln and looked.

Q You didn't get close?

A No. I was standing off over in here.

Q You are pointing somewhere off to the left as you face the Lincoln then, right?

A Well, see, the only ones that were here, I believe, were dad and Randy. I think Randy was over here and dad was here.

Q Okay. And by "over here," you are talking about your dad on the left-hand side at the rear?

A Randy was on the driver's side and my dad was on the passenger side.

Q Okay. Then what happened?

A Well, the guy had—you know, he was—you know, about that, you know, saying he didn't want no trouble, and all this, saying things like, you know, "Let"—"leave [42] us alone. We will stay out here as long as you want," and all of this. "Just give us some water," and all of this, you know. "We will stay out here as long as you want."

And then I went over for a few minutes and I looked at my dad. About that time I could see he was like having a conflict with himself.

Q What do you mean by "he was having a conflict with himself"?

A Fighting his battles, you know. I think now, you know, I could say probably if to let them live or kill them. But, at that time, I couldn't.

Q Did he ever say anything about that? Did he ever ask anybody whether they should let them live or let them die, or anything like that?

A I don't remember if he said anything like that.

Q Okay. Then what happened?

A Well, you know, just shortly after I saw that, you know, conflict he was having, I think Donnie had already walked back down to the Mazda, and me and Ricky were still up there, and he told me and Ricky to go get some water, get a jug of water for these people.

So like we walked on back down to the Mazda and, you know, we got out there and I think we, you know, got the water jug filled, and all that all ready by the time the blast came. You know, the shots.

[43] Q Where were you when the shots came?

A Down at the Mazda. We were—

Q Okay.

A Me, Donnie and Ricky were down there.

Q You were at the Mazda?

A (Witness nodding head.)

Q Where at the Mazda? Were you at the trunk, or at the door, or where?

A Well, I would say we were stationed from the rear to right about here on the side.

Q Okay.

A You know.

Q Okay. And all three of you were right there, right?

A Yes, I think so.

Q Okay. And then you heard—did you see anything before you heard the blast? Did you see anybody raise their weapons or anything like this?

A No. You know, I was putting water in there, getting the stuff. We were loading it back up, I think, loading the Mazda back up because the water was at the bottom of all of it. And then I turned around and I could hear those shots and I could see flashes, you know. I could see silhouettes of the car and the people.

Q Okay. Now could you see the way—could you see [44] the rifles pointing, the shotguns pointing?

A Well, from the angle I was, you know, I could see they were pointing at the car.

Q How could you tell that? From the flashes?

A From the flashes. They weren't too far away from the car.

Q How far away were they?

A All right. Say this is the car. I would say right about there.

Q Two or three foot?

A The people were standing, yes.

Q Okay. But you couldn't see where the shots went?

A Huh?

Q You couldn't really see where the shots went?

A Well, they looked like they were aimed at the car.

Q They looked like they were aimed at the car?

A Yes.

Q Okay. How many flashes did you see?

A I can't really remember them, you know. I didn't count them all. It was all happening, you know, pretty quick there and—

Q Okay. Did you ever see flashes come from both sides of the car at the same time?

A Simultaneously.

[45] Q Simultaneously?

A Yes. You know, like one right after the other.

Q How long in between?

A Just as fast—you know, dad had a Browning automatic, sixteen.

Q A what?

A Browning automatic, sixteen gauge.

Q Yes?

A And I think Randy had a pump.

Q What gauge was that?

A I don't know. We had two of them.

Q Okay.

A I don't know what gauge it was. And then, you know, like you know how to work a pump. It was like that. You know, that is how they were coming. An automatic would work faster. But they were coming like that.

Q Did the flashes light of the scene at all or—

A Just—I couldn't make out nothing.

Q Could you tell who was on which side of the car at that time?

A No, not really. Dad and Randy are built, you know, close to the same.

Q So there is no way you were close enough to distinguish who was who?

A I could see silhouettes, but they were—you [46] know, the last time I was up there, dad was on one side and Randy was on the other.

Q But what I'm saying, put it back in your mind right now.

From those silhouettes, can you tell me who was on which side and who—

A Not from standing at the Mazda, no.

Q Okay. Then what happened?

A Well, you know, the shots went on longer than what they should have.

Q What do you mean by that, "longer than what they should have"?

A Well, I think they had reloaded once or twice, because the gun only holds like five or six shells, you know. I'm pretty sure the number of shells shot was over that.

Q Okay.

A It just shouldn't have taken that much.

Q Okay.

A You know, then like Randy had come back down and told us to load up, get into the car. You know, the three of us to get into the back seat. And not long after that, dad came back down.

Q After Randy came back, did you hear any more shots?

[47] A About one or two.

Q One or two more shots?

A (Witness nodding head.)

Q Were they fairly well spaced out?

A I think so.

Q Was the firing constant until Randy got back? Or did it break off before he came back?

A I think it broke off just before he came back, because dad had told him to come back and tell us to load up in the car.

Q Okay. What I am asking is, Randy was what? Maybe fifty yards away from you?

A What do you mean? Coming back to the Mazda or—

Q Yes. How far was the Mazda from the Lincoln?

A I don't really know.

Q Okay. Randy got back. Did you see him walk back?

A I saw him when he got back to about right here at the edge of the road.

Q Okay. Now had the shots stopped before you saw him?

A Just before.

Q Just before you saw him?

A Yes.

Q Just what? Almost instantaneously?

A Yes. You know, just a few seconds before. You [48] know, like about enough time to walk from there to there.

Q Okay. Randy told you to load up, and you heard a couple of more shots, and these were fairly well spaced out, is that right?

A Yes.

Q Okay. And then what happened?

A Dad came back and Randy and him got into the car.

Q Okay. Who was driving?

A Randy.

Q And where did you go?

A Back down this road and back out onto the highway.

Q Okay. What did you do? You just pulled straight out and went down?

A Yes.

Q Okay. Then did you have any discussion about what happened or—

A No. It got real quiet in the car.

Q Okay. Did you ever talk about it?

A I don't think so.

Q You never talked to anybody else about it after that?

A No. I just—I wanted to forget it.

Q Okay. Where did you go from there?

A We got back on that highway and we headed back in [49] the direction we were going before. And, you know, we were hitting back roads again, and all this. I don't know.

Q Did you ever get on the freeway?

A I don't think so. We may have, but—

Q Okay. Did you ever turn back south again?

A South?

Q Yes. Back towards the way you were coming?

A I'm not really sure.

Q Okay. Let me ask you this:

If you take that road straight on up from where you went till you come to Quartzite, do you remember that and Interstate 10?

A I remember a freeway, going over on the overpass.

Q Okay. You went over the freeway, right?

A Yes.

Q Okay. Then did you keep heading north, the way you were going?

A I don't think so. I think we turned off either east or west.

Q On the freeway or—

A I don't think we got onto a freeway. I think it was like an access road.

Q Okay. Did you ever pull into a rest stop?

A Not that I can remember.

[50] Q Okay. Now after that, where did you head?

A I can't—you know, I don't know directions. We probably backtracked quite a bit, you know.

Q And where were you headed? That is what I am asking.

A Well, we ended up I think in—up in the woods, in Sherwood Forest.

Q Where is Sherwood Forest?

A It's up by—it's in between—you know, where the Grand Canyon road is leading into Grand Canyon National Park.

Q Yes.

A It's right in that area.

Q Right in that area?

A (Witness nodding head.)

Q Okay. Let me ask you this:

While the firing was going on at the Lincoln, was there ever time, enough time to pass between shots that they could have switched sides or traded shotguns?

A I can't really say for sure. There could have been, but I—you know, I just don't remember if there was or not.

Q Did you watch the silhouettes all the time the firing was going on?

A No.

[51] Q What did you do?

A You know, I watched when it started and I turned away. And, you know, I turned around and back a couple of times and checked, looking for my brothers and all this.

Q Did you see the silhouettes moving? Or were they pretty well standing still and firing?

A I would say, you know, they were on the—there were two silhouettes on each side of the car.

Q Two silhouettes on each side of the car? Or one?

A One, I mean. Two up there, but one on each side of the car.

Q Okay.

A You know, I can't say for sure whether they changed sides or not.

Q Okay. Every time you looked, were both silhouettes firing?

A No.

Q Which one wasn't firing?

A Well, you know, it changed off and on. Sometimes I would turn around and see, you know, the side I thought my dad was on would be firing. And sometimes I would turn around and see the—it would be the other side firing.

Q Okay. So when you say the shots were simultaneous, do you mean they came one right after the other, real fast?

[52] A Well, to start off with, you know. But I would say they slacked off.

Q Okay. What were your dad and Randy wearing?

A Clothes?

Q Yes.

A I don't know.

Q Did they have jackets on?

A I kind of doubt it. It was pretty warm that night.

Q Did they have shirts on? Or T-shirts?

A Oh, shirts, I am sure.

Q Shirts?

A I think they were wearing the same pants they got busted in.

Q Were those blue-jean type?

A Well, they were the ones they got busted in. They were like a dress pant.

Q Okay.

A You know, they were Levi dress pants, slacks like.

Q But the same type of Levi pockets?

A Yes, I think so. Not of this material, like a knit.

Q Yes. Okay. Do you know what I am talking about? This type of pocket that runs sort of like this that most [53] Levi's have?

A Oh, yes.

Q It was this type of pocket, wasn't it?

A I would say so, yes.

Q Okay. And were the pants real loose on them?

A I don't know. They fit.

Q Okay.

A You know, I didn't pay that much attention.

Q Okay. What kind of shirts did they have?

A Well, as I remember, the supplies we had, all that we had in there were button-up shirts.

Q Button-up shirts?

A Yes.

Q One pocket? Two pockets?

A I don't know.

Q Is there anything else you remember?

A That is about it.

Q You never discussed this with your dad afterwards?

A I don't think I did. I just kind of wanted to put it off because it was just too much for me, really, you know.

Q Okay. Do you remember, what kind of night was it? Was the moon shining? Was it dark?

A I think it was pretty dark.

Q It was pretty dark?

[54] A It was pretty dark out there, yes.

Q Do you remember seeing any landmarks around there?

A Just desert.

Q Any cactus, or anything like that?

A No. Like I think what it was was scrub desert, you know.

Q Did you see any saguaros, or anything like that?

A I don't think so.

Q Okay. When you turned off on this road, was it gravel or dirt when you turned off the highway?

A Off the highway?

Q Yes.

A Gravel or dirt? I don't remember which it was. It could have been gravel.

Q Was it a marked road?

A A marked road?

Q Yes.

A I think it headed down to a housing deal, or something like this, you know.

Q Did it have a sign on it?

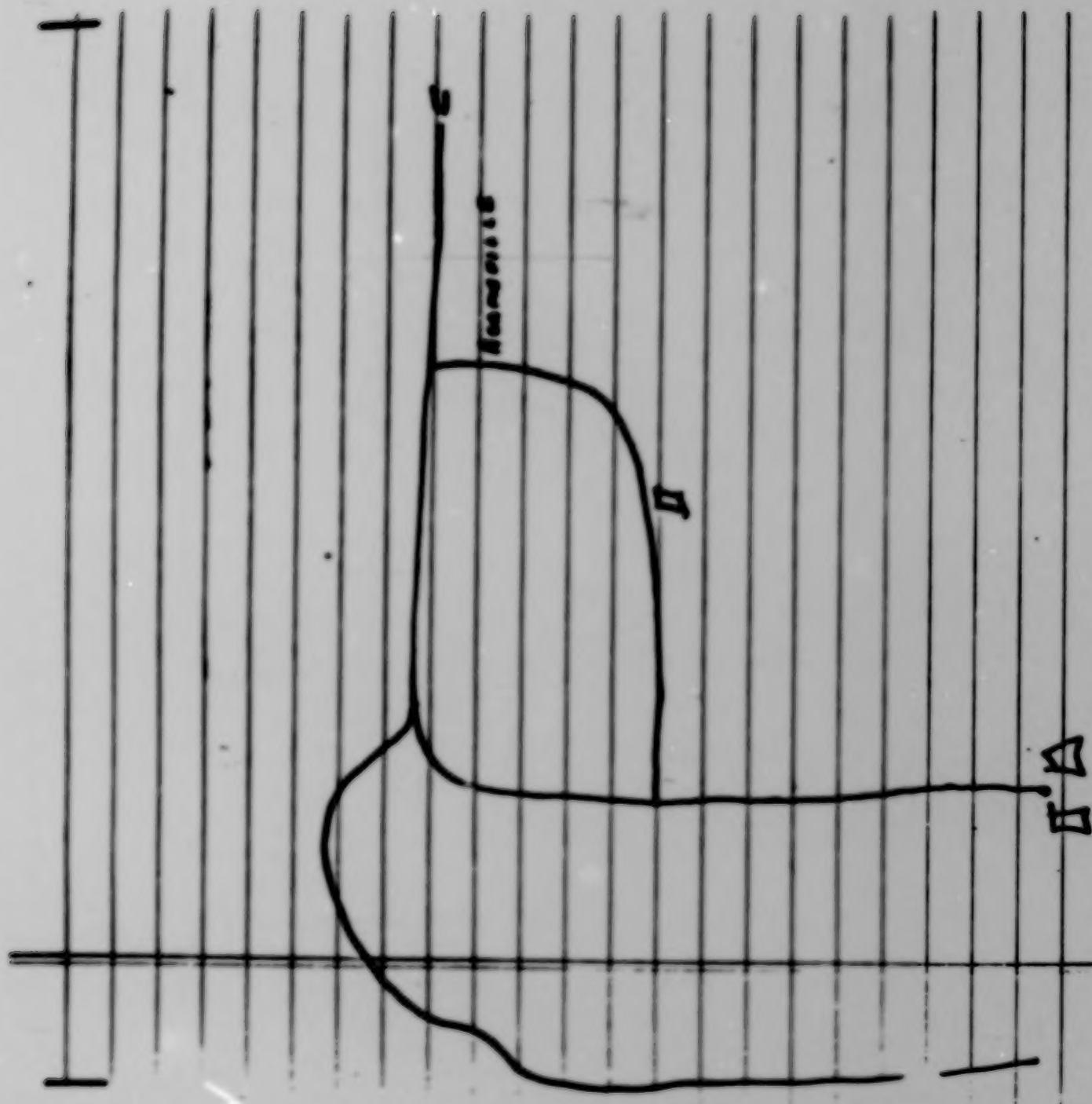
A Up there at the—when you just turn on to it, I think so.

Q When you came down that road, did you go through any washes?

A I don't remember any. That was a long time ago, [55] you know.

MR. BROWN: I don't having anything else.

(Certificate of Official Court Reporter
Omitted in Printing)



Exner "A"

Sketch of Exner's Line
2/2/21
P. E.

Exhibit B

Statement of Leonard J. Jura

2-2-71

(20)

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Exhibit C

Statement of Leonard Jones

2-1-78

②

**IN THE SUPERIOR COURT OF THE  
STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YUMA**

(Title Omitted in Printing)

**STATEMENT OF RICKY TISON**

[2] THE STATEMENT OF RICKY TISON was taken on February 1, 1979, at 4:00 o'clock p.m. at the offices of the Diagnostic Center, Arizona State Prison, Florence, Arizona, before Janet Emmert, Official Court Reporter, Pinal County Superior Court, Division II, Florence, Arizona.

[3] Arizona State Prison  
Florence, Arizona  
February 1, 1979

**RICKY TISON,**

was examined and testified as follows:

**EXAMINATION**

**BY MR. BROWN:**

Q Okay. You know me, right, Ricky?

A Yes.

Q Okay. You know I'm Randy's attorney?

A Yes.

Q Okay. And you are represented by Mike Beers?

A Yes.

Q Who is not here?

A Yes.

Q Okay.

A I am quite aware of that.

Q But Mike Irwin is here, who is the Yuma County Attorney.

A Yes.

Q And I understand that you and your brother Raymond have made a plea agreement and have entered a plea of guilty to one count of murder, and that part of the agreement is that you will testify against Randy, is that [4] right?

A Yes.

Q Okay. You understand that in that case I no longer can consider you as a co-defendant.

A Yes.

Q That I consider you as a State's witness against my client Randy.

A Yes.

Q And so when that happens, I get an opportunity to interview you.

A Yes.

Q Now any time during the interview, if you don't understand a question—

A I'll ask you what you mean.

Q You tell me what I mean, and then let's get it cleared up.

A Okay.

Q If you don't think the question is stated fairly, or you think—you know, anything bothers you about it, okay?

A As long as you ask them in layman's terms, I'll pretty well be able to understand what you are saying.

Q Okay. But what I am trying to tell you is if you don't say something, I'm going to assume that you understood what I asked you.

[5] A Yes.

Q Okay. And I'm sure if at any time you want to ask Mr. Irwin something, why, you know, why don't you just stop and go ahead. Okay?

A Okay.

Q Now let's go back and talk about before the escape. Okay?

A Before the escape?

Q Before the escape.

A Okay.

Q When, Ricky, did you first become involved in planning for an escape?

A For that particular escape? Or just—

Q In planning an escape for your dad.

A Planning an escape? Well, it's been about a couple of years.

Q So you've been in on plans for an escape for a couple of years, is that right?

A Yes. Well, thoughts, you know.

Q Okay. And who did you plan with?

A Me, Ray and my dad.

Q You and who?

A Ray, my brother.

Q How about Donnie?

A No. Donnie wasn't in the plans too often. He [6] knew more or less what was going on, but he just—

Q What about Joe?

A Joe? Well, he was in on quite a lot of it.

Q Now as I understand it, Joe purchased that white Lincoln Continental over in New Mexico, right?

A That is what I've heard. I couldn't say—

Q You don't know?

A —for sure one way or the other.

Q Okay. When was the first time you saw it and found out about it?

A When he turned it over to us.

Q When did he turn it over to you?

A It was a couple of months before the escape. I couldn't give you an exact date.

Q Okay. And at that time, what was the escape plan?

A At that time? Damn! I—I'm not sure if there was one going on at that time. There might have been.



But, like, you know, because dad made the deal with Joe to get that stuff, with him. You know, it was something—

Q What was this deal?

A Huh?

Q What was his deal?

A Well, I would just as soon really not get into it because I've got to live among these people around here and they might not appreciate that too much.

[7] Q Well, let me point out to you, you are not going to have much choice but to get into it.

A Well,—

Q You are going to testify on the stand down in Yuma, and I am going to ask you questions just like I am asking you now.

A Well, I would just as soon you ask them there.

Q Huh?

A I would just as soon you ask them there. Like I can't see any real bearing on whatever that would have on the case or anything.

Q Okay.

MR. IRWIN: Since his attorney isn't here—I'm not quite sure of the circumstances, although I was told by Roy that he had been contacted—maybe Vic told me, I can't remember—and for some reason he didn't know for sure whether he would be here or not. But if this is important to Ricky, he may be down in Yuma before the trial and—

MR. BROWN: We will catch it then.

MR. IRWIN: We can catch it before the trial down there if you think it's necessary.

MR. BROWN: What I wanted to go into with him was Adams and Joe and Hudson.

MR. IRWIN: I personally have an objection because [8] it's obvious that Ricky at this time doesn't have his lawyer, and we can go into other parts of it.

MR. BROWN: Okay.

Q (MR. BROWN) Joe got you the guns, is that right?

A Yes.

Q Okay. And how long was that before the escape?

A Oh, just—it was still—you know, I think we got the—I believe we got the guns before we got the car. I couldn't give you the exact date on it or anything.

Q Excuse me just a moment.

Okay. When did you decide on this particular escape plan?

A It was brought up a week before the actual escape. Really, the decision to go ahead with it was that Saturday.

Q Who was present when it was first brought up?

A When it was first brought up, I believe it was just me and Ray and—no, I don't believe I was there. I was there Saturday, the Saturday when we decided to go with it.

Q Wait a minute.

A It was me and Donnie.

Q Okay. The week before, who brought it up, do you know?

A Ray told me about it. I couldn't tell you who [9] actually brought up the—

Q Had you and Ray talked about it before and decided to do it?

A We talked about it during the week.

Q During that week?

A Yes.

Q And apparently Ray discussed it with your dad?

A Yes.

Q Or somebody did.

A Yes.

Q And then Ray came back and told you that it was probably on, or what?

A Well, no. It was just something that was said during the discussion of the escape—of, you know, an escape, and I believe it was just a comment made that, you know,

just go right out, you know, and just do it. And the way—you know, the way it sounded, it just sounded like it might work. More or less, Ray remembered it and told me about it, and we more or less all thought about it that week, and that Saturday made up our minds to go at it.

Q How did Donnie get into it?

A Donnie? He just more or less decided to go that Saturday. Me and him and—me and him visited dad that weekend.

[10] Q Okay. Then this is the day before the escape, right?

A Yes.

Q And you and your dad and Donnie talked it over?

A Yes.

Q Now when did you first know that Randy Greenwalt was going to be in on the escape?

A That weekend, you know, in front of—I believe it was mentioned the weekend before that, the fact that he holds the position in the yard office there. I couldn't tell you for sure on that either, just the fact it was mentioned that Saturday.

Q Did your dad say how Randy was going to help or what he was going to do?

A Well, he just mentioned, you know, the fact that he is up there in the yard office, like that would just about center things up right there. Other than that, if no one was there, just by standing outside that window, the escape couldn't actually come off very well.

Q Did you get the car that week?

A That week?

Q Yes.

A (No answer.)

Q When did you get the car?

A We had had the car for a couple of months.

[11] Q Yes, but it was up at Bob Adams, wasn't it?

A It was stored there, yes.

Q That's what I'm asking. When did you get the car?

A It was I believe gotten that weekend.

Q The Saturday after you talked it over with your dad and decided to do it?

A Yes. I couldn't tell you for sure because I stayed in Casa Grande.

Q Okay. How about the guns? Where were they?

A They were in the car.

Q They were in the car already?

A Yes.

Q Okay. I think you told somebody that you cut down one of the guns?

A (Witness nodding head.)

Q Which one?

A All of them.

Q All of them?

A I worked on all of them, yes.

Q Where did you learn to—

A I just more or less tinker with everything. I like working on just about anything. I have no perfect—I have no degree in gunsmithing or anything. I just more or less see what is wrong and what is not.

Q Okay. Now Sunday morning, how did you get to [12] Florence?

A I drove the Galaxie up from Casa Grande.

Q You drove the Galaxie? Who was with you?

A No one was with me. Donnie and Ray came down in the Lincoln that morning.

Q Where did you meet them?

A At the hospital.

Q Did you see them come to the hospital?

A Yes.

Q You were there first?

A Yes.

Q Which way did they come from?

A (No answer.)

Q Did they come from down—or down Adamsville Road?

A They come from, you know, Casa Grande. I couldn't tell you which way they took.

Q Well, no, let me show you something. Let's—

MR. BROWN: Here, Jan. We should have these for the last one and I'll start over on this one.

THE COURT REPORTER: Why don't you make it "D"?

Q (MR. BROWN) Let's make it Exhibit D, and will you come up here for a second?

Let's say that these two marks are the overpass over to Coolidge. Do you know what I am talking about?

[13] A Yes.

Q You come out of Coolidge, you come over the railroad tracks and you come down and head for Florence, right?

A Yes.

Q And you come down this road like this, and you can make a turn here and come into Florence, the main part of Florence.

A Yes. That is the main road.

Q Out here Adamsville Road takes off and it comes down like this, comes down behind a hill.

A That is the road they were on when they came to the hospital.

Q Okay. They were on Adamsville Road, right?

A Yes. I couldn't tell you if that was the name of it or not, but that is the road they came on.

Q Okay. That is the one they came on.

A The one that goes in front of the hospital.

Q So they approached the hospital from the east?

A I guess.

Q From the Casa Grande side?

A Yes, I believe so.

Q Okay. Now there is another highway—if you come on into Florence, you come on down here, and here's Butte Avenue. Okay? And the courthouse sits over in here, a [14] block off, and the prison sits out here like this. And this is the highway that goes up to Apache Junction.

A Yes.

Q Okay. Do you know where I am talking about?

A Yes.

Q Okay. To the best of your knowledge, was that white Lincoln over in the area around Butte and the highway that goes to Apache Junction?

A I don't believe it was, no.

Q It wasn't?

A I don't think it was.

Q That morning?

A (Witness shaking head.)

Q Okay. What did you do then? You met at the hospital, what did you do?

A We got in the—we had to go and get another box because they brought this kind of big, huge box that was kind of all wrecked up and everything, and we had to get another one of them. We took off in both cars—yes, because there was a guy standing at the hospital door there and we didn't, you know, feel like it was too smart of a move just to stay there and start switching things. But we drove both cars out. We never met anywhere after that. We just went there and got another box.

Q You went into where?

[15] A I believe it was Circle K that we got the box at.

Q Yes.

A Yes, I'm pretty sure it was.

Q Okay.

A Okay. And then we came back to the hospital, and that is where we switched the cars over, switched everything in the car.

Q Could you see them all the time when you went to the Circle K?

A See who?

Q The guys in the other car.

A No.

Q Okay.

A That is why I say, I really don't think—



Q But you don't know?

A No, I couldn't say for sure.

Q So you got to Circle K, you got a box at the Circle K and you went to the hospital?

A Yes.

Q And you switched everything?

A Yes, switched all the guns, just the guns that was in the box. See, everything was already loaded in the Lincoln, and the guns that were in the box and stuff went over into the Galaxie, and that is when we took Ray up to the prison for the visit. You know, he was going to get [16] dad up into the yard there to visit and then we were going to drop him off and come back a half hour later, and then we would pull up and just give the horn at dad. And, you know, dad was supposed to be already up there and everything.

Okay. Then we walked on into the yard office, to that little lobby right there, and then dad—you know, he timed it out so, you know, we wouldn't be there too much ahead of him or anything. And that is when we sat in there and I started filling out the visitation slip, and decided not to. And Donnie filled one out and I went over and got a drink of water.

Q Donnie filled one out?

A Not completely. I believe all he got on it was his name.

Q Okay.

A And then we—okay. Then I came back and my back is facing the glass window.

Q Okay.

A And the box is right there on the table, you know. Okay. Then that is when I threw the cover back and took the shotgun out and pointed it through that little hole at the guard. And that is more or less when everything started going down, right then.

Q Okay. You got out of the prison, right?

[17] A Yes.

Q You got in the Galaxie?

A Yes.

Q Where did you go?

A To the hospital.

Q What did you do?

A Well, that is when we took the guns out that—out of the Galaxie. I put them in the Lincoln, and everybody got in the Lincoln and took off and went back down that road, you know, and got back on the main highway and went up to Attaway and went down on that till we got to Hunt. And then we made a left on that and just—after that, I couldn't tell you what the roads were we took. But we went—you know, we went way up towards these orchards and stuff up there.

Q Okay. Did you ever stop anywhere?

A No.

Q Okay. After you got past Phoenix—

A Yes.

Q Okay? Where did you go?

A Well, we—okay. We went down cruising a few more roads, but we came to like this old abandoned house.

Q Well, let me ask you, do you know where the Brenda Cutoff is out there?

A The what?

[18] Q The Brenda Cutoff, out the Buckeye—out on I-107.

A No.

Q Did you ever cross the freeway after you got past Phoenix?

A I believe we did.

Q Did you get on it a little ways and then back off it?

A The I-10?

Q Yes.

A Yes. That is when we came up to the Phoenix—

Q Okay. But after you ducked off on Baseline, didn't you go out there by the orchards and the fields?

A Yes. We were by the orchards and fields.

Q And then you went west? You went west out that way?

A Yes.

Q Okay. After you got past that major Phoenix area—okay? Did you come into some more little towns?

A There was one other town, to my recollection, we came through. It has this—you know, just a main road goes right through it, and I don't think we went through any other towns after that.

Q Okay. Did you ever stop anywhere?

A No, I don't believe so.

[19] Q About what time was this?

A I couldn't tell you.

Q What time did you get to the prison?

A Me and Donnie showed up to the prison at nine. Me and Donnie came back to the prison after dropping Ray off at nine. And after that, I couldn't tell you what time it was when we left, or anything else.

Q How far out in the desert did you go?

A Quite a ways.

Q Then did you go west? Or did you go west and then bend back sort of south?

A I couldn't give you an exact ratio, but it was—after we got on this one road, it was one super long road, and a lot of curves—

Q Dirt?

A In and out. Yes.

Q Okay.

A And we went into some mountains and so forth.

Q Okay. You came out of the mountains into a big valley?

A Yes. I guess. You know, kind of farmed-out land, you know, used to be. It's all desert.

Q It used to be, but now it's broken down?

A Yes.

Q Some old house trailers out there?

[20] A I guess.

Q You didn't see any of those?

A No, not—

Q Busted down stuff?

A (No answer.)

Q Okay. You came to this abandoned house?

A Yes.

Q And can you describe that house for me?

A Well, really ratty. You know, messed up. It's been like that—the way it looks, it's been like that for quite a few years.

Q Did it have a barn?

A Yes, like a big metal shed on it. That is where we kept the car at.

Q Okay. Were there any other houses around?

A Yes. There was one down the road a ways.

Q Were they houses or trailer houses?

A This one was just like a—you know, it was—I believe it was a house.

Q Okay.

A They had this big like huge canopy for just tractors and so forth. But that is just about all I can remember about it.

Q Okay. And there was another house not too far away?

[21] A Yes. There were some other houses, because at night you could see lights from other houses.

Q Then if you went on down that road, did you come to a little store and a bar?

A Yes.

Q Does the name "Whispering Sands" ring any bell as being written on any of it?

A Whispering Sands? No.

Q Okay. Did you ever go in the bar?

A We went in—okay, we came up to this town. It was just me and Ray at this time getting some supplies, and we came to this town looking for a station. And this particular bar, you know, said "Gas" and everything. We couldn't see no gas pumps or nothing. So I walked into this bar, and there was nothing there but a bar.



Q What did the building look like? Was it a white building?

A I couldn't say if it was white or not. It was old.

Q Old?

A Yes. I couldn't tell you if it was—

Q Wood?

A I believe so.

Q Had a pitched roof?

A A what?

[22] Q Pitched roof?

A I couldn't tell you.

Q Was there a little grocery store there, too, close to it?

A Well, it said—you know, like it said "Groceries" and all this on it. It said that, but when I walked in the door, all it was was a bar. Then down the road was a little store.

Q How far down the road?

A I would say about a mile, a mile and a half.

Q About a mile, mile and a half down was a grocery store?

A Yes.

Q Which way? Going away from your camp or towards your camp?

A Going away from our camp.

Q Going away from your camp?

A Yes.

Q Okay. Back towards I-8, kind of?

A Yes. The road eventually—I mean it more or less paralleled it at that time, the freeway. But it did curve off to go to the freeway, yes.

Q Okay. How long did you stay there?

A I believe a couple of days, two or three days.

Q Do you remember how many nights you slept there?

[23] A Well, I think two. You know, I am pretty sure we did. I can remember staying there a while.

Q You think you slept there two nights? What? You left there the third night?

A Yes. It was either the second night or the third night we left. But, you know, I believe we were there for a couple of days.

Q Okay. When you left, who was driving?

A Donnie was driving as we first left, driving the car. And then like him and Randy switched off every once in a while in the driving.

Q Where did you go?

A Well, that road you just talked about, the one that parallels the freeway. Okay. Well, where it curves, there is like a big gin there, but then it also—you can just keep going straight and there is like a dirt road. It's not really used a whole lot, but there is a dirt road there. And we hit that and it went on for a little ways till it came to a truck route.

Q By "a truck route," do you mean an access road next to the freeway?

A I would think so.

Q Did you see cars going on the freeway beside you?

A I couldn't tell you. I don't remember if I did [24] or not.

Q Okay.

A It was just—you know, it was referred to as a truck route. My dad referred to it as a truck route.

Q Okay. Which way did you turn on it? Right?

A Yes.

Q Where did you go?

A We went down there a little ways and had a blowout on the Lincoln then.

Q Okay. Do you remember any signs as you went, or anything?

A Particular signs? No.

Q Do you remember a sign that said "Dome Valley"?

A No. I can't say I do.

Q You finally got on this other paved road then, huh?

A Yes. This was the truck route I'm talking about now. It's paved road.

Q Okay. Is that the one you had the blowout on?

A Yes.



Q And what happened when you had the blowout?

A Well, we drove on it for a little ways to go up to—we wasn't making any progress doing that at all. And so we decided to pull over a car and, you know, take their car from them. And that is—you know, that is [25] when the Lyons family came up.

Q Okay. Now who decided that you were going to flag down a car, or pull over a car?

A Well, I believe my dad mentioned it. You know, I believe he said, "Well, you know, let's flag a car down." You know, it wasn't really a hard decision. You know, everyone was more or less for it. You know, it wasn't anything that was argued over or anything.

Q Let me ask you this:

While you were out there in this abandoned house, and et cetera, who was in charge?

A Dad more or less ran everything.

Q Dad? How did he set it up? Did he set it up pretty efficient or—

A Well, what do you mean? I don't know what you mean, really.

Q How did he go about running things?

A Well, more or less just deciding—you know, figuring out what we were going to do next. Like he pretty well knew this country.

Q He pretty well assigned everybody to what they were supposed to do?

A He never really assigned. The only real job anybody had was sentry duty. And we more or less all decided who wanted to do that.

[26] Q What he called it was sentry duty?

A Yes, I believe so. That is how I referred to it. I don't know exactly how he referred to it.

Q Okay. What happened when you decided to flag down a car? Did everybody get out of the car?

A Just the man and the woman got out at first.

Q Well, wait a minute. No. Let me go back.

You guys just decided you were going to flag down a car, right?

A Yes.

Q Where are you?

A On that truck route.

Q Are you in the car or out of the car?

A Out of the car, I guess. You know, we got out of the car once or twice, you know, to check the tire out and everything. I couldn't tell you exactly where we were, if we were in or out when we decided upon this.

Q I assume you finally stopped, right?

A Yes.

Q Okay. Did everybody pile out of the car then, or what?

A Yes. Everyone got out to look at the tire and everything.

Q Okay. And who flagged the car?

A Ray did the actual—you know, the actual [27] flagging it down.

Q Where was everybody else at this time?

A Off to the side of the road, down into the gutter.

Q Okay. Were you behind the Lincoln or in front of the Lincoln?

A Behind it.

Q Behind it?

A (Witness nodding head.)

Q Okay. How many cars did you flag?

A We flagged I believe just one—one, you know, before the Lyons came along. And it just went by.

Q Okay. And the Lyons came. What did they do?

A They went in front of the car, you know. They went ahead and they were pulling off. They got in front of the car and turned around and went back of it and turned around again and pulled up behind the Lincoln.

Q And what happened then?

A That is when the man and the woman got out, the Lyons. They got out, and that is when, you know, me and Donnie and then Randy and dad got out and started to come up to the side of their car.

Q Okay. Did they walk forward to where Ray was?

A Yes.

Q Both of them?

[28] A Yes.

Q Okay. Did Ray talk to both of them?

A They were—I believe they said something. I couldn't tell you.

Q Did it look like he was talking to the two of them?

A You know, there wasn't a real long time distance. I mean just as soon as they got out, we started advancing forward. I don't see where they had much time to say anything.

Q Okay. Where were the man and the woman? Were they standing up by Ray?

A At this time they were up—yes, up close to Ray.

Q Were they standing pretty close together, or far apart, or what?

A I couldn't tell you for sure.

Q You don't remember?

A No.

Q Okay. And then you guys came up. What? Did you come up to where Ray was or—

A We came up towards the side of the car. And then like, you know, just—just kind of spread out. Me and Donnie, I guess we might have been about ten yards apart. And we came up on to like the passenger side of the car, [29] and then dad and Randy came up on the other side. Just, you know, got up to them. I couldn't tell you how close we were to the people or not. But then like, you know, Mrs. Lyons, she was coming back, you know, because when she seen everything coming down, the guns and everything, she went to get her child. And like dad was coming up from behind them, and she—you know, dad more or less had his shotgun leveled off at her at that time. And she kept walking toward him and, you know, finally she did stop. But, you know, dad went ahead and let her get her child out of the car.

Q Okay. What happened then?

A That is when they, you know—the other girl got out of the car, too. Okay. Then they were put into the

back seat of the Lincoln, and Donnie, you know, was watching them. Ray was driving the Lincoln, and me and dad and Randy got into the Datsun, I believe is what it was, and we turned—you know, we turned around on the road and went back to that other dirt road that we passed earlier.

Q Did Ray turn the Lincoln around?

A Yes.

Q Okay. And then what happened?

A Okay. We went down this dirt road that we did pass earlier. We remembered it being there. We went down [30] it and took it to another dirt road, and we turned down it, and that is when—

Q When you turned off the highway on this first dirt road, you turned left, right?

A Yes.

Q And when you turned off that road onto the other one, which way did you turn?

A Right.

Q Okay. And how far down that road did you go?

A Just a little ways, I believe. I don't believe we went very far down it at all.

Q Which vehicle was in front?

A The Lincoln was in front.

Q Okay.

A I believe it was, yes.

Q Okay. And what happened then?

A That is—okay. Then the Lincoln was going on—yes, the Lincoln was going on down. The Mazda was backed up to it.

Q How did the Mazda get backed up to it? Did it back up down the road?

A You know, I can't be exactly sure who was leading who. But I believe the Lincoln was in front when we left the truck highway. But we did—we pulled over and let it in front of us.

[31] Q That is what I'm asking. How did you turn the Mazda around?



A I can't really remember. I guess we just turned it right there when we went down the road.

Q Okay. But the Mazda is the one that turned around and backed up to the Lincoln?

A Yes.

Q And they were trunk-to-trunk?

A Yes.

Q How far apart were they?

A I don't know. A few yards. Not a great distance, or anything.

Q Okay. What did you do then?

A Then we started going through everything, getting, you know, all their stuff out and going through the inside of their car.

Q What did you do with the people?

A They were standing like in the lights of the Lincoln, I believe.

Q Of the Lincoln?

A Yes.

Q Okay.

A And Donnie was watching them at that time. They weren't standing right in front of the lights. They were standing off to the side of the car, but the lights—the [32] beam of the lights was still on them.

Q Do you remember an interview several days ago that you had with Mr. Irwin, your attorney, Mike Beers, and Tom Brawley?

A Yes.

Q Now I want to get this clear because you just said two different things—

A Okay.

Q —in that statement. Okay? You said—I'm sorry, I lost it. Just a minute.

Okay. "And then we went on down to another dirt road that we approached, just happened to be on this, and we had just been on it a couple minutes at the most. Then we pulled down this road just a little ways and we backed up the cars together, and the Lyons fam-

ily were escorted out of the Lincoln and more or less put off to the side of the Mazda lights so that the lights of the Mazda were on them, and kind of off to the side, and then at that time Donnie was covering them."

Let me tell you that Lieutenant Brawley's notes that he wrote up indicate that you said at that time that:

"He further stated that during the time they were switching the items from the two vehicles that the Lyons family and Teresa Tyson were standing in front of the Mazda in the headlights."

[33] Do you—

A Well, I do remember the statement, but I believe it was the Lincoln that they were standing in front of.

Q You think it was the Lincoln now?

A Yes. I'm pretty sure, yes.

Q Then what happened?

A Well, we started switching everything around at that time. I was taking—going through the stuff in front of the Mazda—the seats and stuff, and the purses and wallets, and so forth. I was going through their articles there. And then just before I got through with all of it, you know, just—I just wanted to get it done. So I put everything in a big purse, everything there, and then I—

Q Where did you put that purse? In the back of the Lincoln?

A No. We kept that purse because we wanted to go through it, you know, and see what was all there.

Q Okay.

A And then I went back and started helping Ray go through the trunks of everything. You know, pulling everything out of the Mazda and putting everything in the Lincoln, and everything from the Lincoln into the Mazda.

Q Okay.

A Okay. At that time dad went out—you know, he [34] was out in the desert, you know. I guess, you know, he came back and told us to take the Lincoln—told one of us to get in the Lincoln and drive it back over there.



Q Do you remember who drove it?

A Donnie did.

Q Donnie did?

A Yes.

Q Okay.

A And that is—he, you know—it was turned around so it was facing the road. And at that time dad came up and started shooting, you know, to stop the engine so it wouldn't run anymore.

Q Was the engine running?

A Yes.

Q Donnie left it on?

A Yes. Dad told him to.

Q Your dad told Donnie to leave the engine on?

A Yes. He wanted to make sure it wasn't going to run.

Q Okay. Then what happened?

A Okay. At this time is when the family were escorted over to the Lincoln and—

Q Who did that?

A All of us were—you know, we were just around them, you know, and escorted them over to the Lincoln. [35] And they were, you know, standing up at the front of the Lincoln there at first, and that is—

Q Were the lights still on in the Lincoln?

A Yes.

Q Your dad hadn't shot them out?

A No. He shot into the radiator of the Lincoln.

Q Okay.

A And that is—well, that is when dad—you know, we were around them, and Mr. Lyons at that time, I can remember him saying, you know, something like just, you know, "Don't kill us," or something, and dad saying that, you know, "I'm really thinking about it," you know, something to that—

Q Who was standing there when that was said?

A We were all standing around them.

Q Were all of you close enough to hear it?

A Yes.

Q Okay. Go ahead.

A And then at this time we—dad, you know, wanted—he told us to get some water in a jug for them.

Q He told who to do this?

A He just said to do it. He wasn't telling anybody in particular to do it. Donnie went back and, you know, he was having problems finding—getting the five-gallon can that we had out of the Mazda. And at this time is [36] when, you know, me and Ray went back and started helping.

Q Did your dad tell you to go back?

A Well, he yelled back again, you know, wondering where the water was.

Q Yes.

A You know. But then when me and Ray went back, we got the water, and me and Ray came back with it and we were going to go over to the Lincoln and give it to them. This is when dad said, "Let him get a drink of water."

Q Where was your dad then?

A He was off to the side of the Lincoln.

Q How far away?

A I couldn't give you—you know, it was just a little distance. I couldn't give you an exact distance.

Q Pretty close?

A Not real close, no.

Q Too far for a shotgun to shoot?

A No, it's not too far for it to shoot. But he wasn't standing in the position that he was when, you know, the shots were fired. He was a few yards away from the Lincoln at this time.

Q He was a few yards away from the Lincoln?

A Yes. You know, I couldn't give you anything exact on that at all.

Q Can you judge from something in this room?

[37] A Well, about the distance across this room, and maybe a little less, or something.

Q Okay. You are indicating a distance of what? Maybe thirty foot?

A Yes, probably.

Q Okay. Then where was he standing in relation to the Lincoln? Was he standing on the passenger side or—

A He was standing on the passenger side, yes.

Q Was he standing in front of the Lincoln or behind the Lincoln?

A More or less to the side of the Lincoln.

Q Straight to the side of it?

A Yes, I believe so.

Q What kind of country was this?

A Desert.

Q Were there any trees?

A Bushes. You know, just regular desert bushes, and so forth.

Q I think you said in here somewhere he told you to back it off into some trees. I take it you didn't mean "trees"?

A I have no idea what the statement was made for or anything. I couldn't say.

Q Do you remember any distinguishing landmarks, or anything like this?

[38] A (No answer.)

Q Any cactus or—

A No.

Q What kind of night was it? Was it dark?

A It was—

Q Was it moonlit?

A It was dark.

Q How well could you see?

A It was dark, is about all I could say. You could make out people. You couldn't see them as clearly as I can see you now.

Q How far away could you recognize people?

A Oh, I suppose a little distance. I couldn't say for sure, you know.

Q Could you recognize people say from a distance from that wall of this room to where I'm sitting?

A You could probably make out the form pretty well, yes.

Q You could make out the form. Could you make out the face or their identity?

A If you knew who you were looking for, yes, you probably could.

Q Okay. You brought back the water and your dad said, "Give him a drink," right?

A Yes.

[39] Q And who handed him the jug?

A I believe Ray was carrying it at this time.

Q Ray handed it?

A Yes, I believe so.

Q Okay. Then what happened?

A That is—it was right after about that, dad kept the jug, and that is when him and Randy went behind the Lincoln.

Q They went behind the Lincoln?

A Yes.

Q How far behind the Lincoln?

A Right—you know, right behind it right there. You know, kind of the trunk.

Q Were they both on the same side? Or were they directly behind it?

A No. Randy was on the left. They just, you know, walked over and met behind the Lincoln.

Q Okay. Then what happened?

A Well, after that, they—you know, that is when they came back up and, you know, picked up the shot-guns, and so forth, and started shooting into the Lincoln.

Q How far away were you?

A I couldn't really tell you how far I was, you know. It was about maybe just a little more than this distance here.

[40] A A little more than the length of this room?

A Yes.

MR. BROWN: What do you call this room?

A GUARD: What do we call it?

MR. BROWN: Yes.

A GUARD: It's just a briefing room.

MR. BROWN: Briefing room in the Diagnostic Center at the Arizona State Prison?

A GUARD: Yes.

MR. BROWN: Is this the only briefing room in here?

A GUARD: Yes.

MR. BROWN: Okay.

THE COURT REPORTER: Do you want the prison guard identified?

MR. BROWN: He is a sergeant from the Arizona State Prison sitting here, that has been sitting with us, and I was trying to find out what room we are in for identification purposes.

Q (MR. BROWN) Okay. You saw the—you saw both guns come up?

A Yes.

Q When you say you saw them come up, what do you mean?

A Well, when I seen them coming from down at the side, up.

[41] Q Okay. Which way were they shooting?

A In toward the Lincoln.

Q From the front, or the back, or the side?

A The sides.

Q Or where?

A From the sides.

Q Okay. Did you watch them all the time they were firing?

A I didn't watch them all the time. You know, I seen them firing, yes.

Q Did you see both people fire?

A Yes. I seen flashes from both guns.

Q How many times did you see them fire?

A Several. I couldn't tell you how many times.

Q More than two?

A Yes.

Q From both?

A Oh, yes.

Q Okay. Did they stay on the same side as they started?

A No. After—you know, after there was quite a lot of shooting, that is when Randy came back to the Mazda. And then dad stayed there, you know, still shooting a couple of rounds, until he was off on the left side at that time when I looked over.

[42] Q The left side? Is that the passenger side?

A No. That is the driver's side.

Q The driver's side? Your dad was standing over on that side shooting in?

A Yes.

Q How far away from the Lincoln was he?

A Well, right next to it. The way it looked from where I was, you know, I could still see the flash from the gun on the outside of the car.

Q Do you think that both of them fired over five times?

A I would think so. I couldn't—I couldn't, you know, say for sure. You know, there were several shots fired.

Q Now you say you saw some flashes coming from both sides of the car at the same time, is that right?

A Yes.

Q Did you see more than one flash come from each side of the car?

A Yes. You know, when I looked there at first, yes.

Q There at first?

A (Witness nodding head.)

Q Okay. Then I take it you turned around and you didn't look for a little bit?

A That is when me and Ray went back to the Mazda at [43] this time, and we didn't really watch it.



Q How far was the Mazda from the—

A I couldn't really say. You know, it was still on the road. I couldn't give you any distance on it, or anything.

Q Can you relate it like to a football field? Was it as far away as the length of a football field? Or half of it? Or—

A I don't know. Maybe twenty-five, thirty yards away, something as such. I couldn't say for sure.

Q Did the shooting stop and then start up again?

A Yes. You know, it didn't stay like real constant, you know. Like when Randy came back there, it stopped there for a little bit, and then there was more.

Q Okay. Until Randy came back, was there any break in the shooting?

A Like I said, there wasn't, you know, super—it wasn't always constant, you know. But, you know, it pretty well kept up.

Q Okay. And then—but on more than one occasion you saw the flashes coming from both sides of the car?

A Yes.

Q Now when I say "on more than one occasion," I'm talking about you looked, you looked away, and then you looked back, and there were still flashes coming from both [44] sides of the car?

A As far as looking back then, I was just more or less listening to it then, you know. I can't remember for sure if I looked back again and seen any firing then or not. I did look back to see my dad still firing on the left side, but this was after Randy was back at the Mazda.

Q What did Randy say when he came back?

A I can't remember if he said anything or not.

Q Okay. What happened then?

A Well, then dad came back, that is when we got in the car and we went—you know, went back down the same road that we came on and got back on the truck route, went back down, you know, going the same direction we were heading.

Q Where did you go from there?

A We went up to a—up towards Flagstaff.

Q Do you remember crossing the freeway a little bit after?

A Yes. I believe we were on the freeway for a short period of time, or something. I couldn't say for sure about that.

Q Okay. But the cars were backed together trunk-to-trunk, right?

A Yes.

Q And the Mazda was the one that turned around?

[45] A I believe so, yes.

Q And you were riding in the Mazda?

A Yes.

Q Had you gotten out before it turned around?

A I don't remember.

Q Did you ever talk to anybody about it after it happened?

A You mean after we left there?

Q Yes.

A There wasn't anything really said about it, no. At that particular time, there wasn't anything said about it at all.

Q Did you ever talk to anybody about it later on while you were out—

A No. We—you know, just the fact maybe, you know, listening to see on the radio, and so forth, to see if they were found or anything.

Q Did you ever talk to your dad about what had happened?

A I never talked to him. He mentioned something to me at one time about it.

Q What was that?

A Just that, you know, Randy did—you know Randy wanted to kill them. You know, that was the reason they went back behind the Lincoln. He said they were talking [46] then, and dad was saying that Randy, you know,

wanted to kill them, you know. He just—you know, that was the only thing that was really said about it.

Q I see. When did you have this conversation with your dad?

A I believe it was at that campsite that he told me about it.

Q Was anybody else there when you had that talk?

A No. I believe it was just me and him there.

Q Do you remember anything about the road you were on, that road coming off the highway? Was it gravel? Dirt?

A The one when we took the people down?

Q Yes.

A I believe it was dirt.

Q Okay. Now there is two roads we are talking about. One comes off of the highway, and then you turned on to another one. Were they both dirt?

A Okay. The one that turns off the highway was dirt. And then the one we turned off after that?

Q Yes.

A They were both dirt.

Q They were both dirt?

A Yes.

Q Was one of them gravel?

[47] A I couldn't say for sure if it was or wasn't.

Q Okay. Was there any other weapon fired out there except those two shotguns?

A No. They were the only two shot.

Q And where did you get the ammunition that you used?

A Oh, we bought it here and there. It's not really hard to buy ammunition.

Q Sort of a mixed lot?

A Yes.

Q When was the first time you ever discussed testifying against Randy with anybody?

A It was after court that—after we were sentenced that day, is when our lawyers told us about it.

Q Did you ever discuss it before then?

A Discuss it? No. We didn't really like the idea of doing it.

Q Did you ever discuss it with your Uncle Joe?

A No. We don't discuss much of anything with him.

Q Did you ever talk to your Uncle Joe after you got put in jail?

A Just the time when they found my dad. He came to the jail to tell us about it.

Q Did he talk to you then about testifying against Randy?

[48] A I don't remember if he did or not.

Q Did you ever talk to a fellow by the name of Mark Mills?

A Mark Mills? Yes.

Q What did you tell Mark?

A We just talked about the jail conditions, and so forth.

Q Did you ever tell Mark that there were other things that you had done and the authorities didn't know anything about it?

A I don't recall ever saying anything like that to him.

Q Did you ever tell him that your dad was trying to have intercourse with the girl, but couldn't get his penis hard?

A No, I never told him that.

Q Did you tell him that you killed a family down in Yuma?

A No, I don't believe there was ever anything said about that.

Q I'll tell you that I have a report here that was prepared by Tom Solis of the Pinal County Sheriff's Department in which Mark Allen Mills said that you said those things while you were in jail, and that is why I asked you about it.

[49] A Well, see, a lot of things were said back and forth, I mean people were telling me Ray was saying this and that. People were telling Ray I was saying this and

that, too. And, you know, we found out from each other. It's just a bunch of crap. You know, everybody just wants to get into it.

Q Okay. Now the day that you were captured out at the roadblock, you made a statement to Lieutenant Brawley, didn't you?

A Lieutenant Brawley? Not at the roadblock. This was at the jail.

Q At the jail?

A Yes.

Q You made a statement that day?

A Yes.

Q What did you tell Lieutenant Brawley?

A I couldn't tell you.

Q Did you tell him essentially what you told me?

A Pretty much so, I would think, yes.

Q Did you also tell that to a Sergeant Salyer out at the scene?

A Is he that big tall guy?

Q Yes, great big mama.

A Yes.

Q Did you ever camp by a river?

[50] A Yes, I believe so.

Q Did you camp in two separate places?

A We camped in several different places.

Q No, I'm talking about—well, let me ask you this:

According to Ricky, this is what Salyer says you told him out there. Okay?

"According to Ricky, the first day was spent driving the back roads to put some distance between them and the Florence area and to buy them some time. When darkness came, they made camp at an unknown location. The first or second day they had a flat tire on the Lincoln, which they changed with a spare tire. The second day was also spent driving back roads, and that night they camped by a river. It was at this camp that they buried the portable radios that was taken from ASP."

Did you tell him that?

A Well, I couldn't say I told him that word-for-word, but it's a good chance I did.

Q Okay. Were you lying to him then?

A I wasn't telling him the whole truth.

Q Okay. Then you talked to Lieutenant Brawley that afternoon, didn't you?

A Yes, sir.

Q When you talked to Lieutenant Brawley—okay? [51] His notes say:

"We asked him who shot the people, and he said, 'I don't want to talk about it.' We then said, 'You might as well go ahead and tell us because there are only two people left, your dad and Greenawalt.' And he said, 'That's right.'"

Then he puts in, quote, "We got in the Mazda and left. It was real quiet. Nobody talked about the shooting."

And he ends the quote and he says, "We asked him why did he think the people were shot. And he replied that his dad felt it was a necessity because the cops had gotten on to them too quickly and they didn't want any witnesses."

Did you tell Lieutenant Brawley that?

A I couldn't say for sure if I told him that or not.

Q Is that the truth?

A I did make a statement to him.

Q Is that the truth?

A About being a necessity?

Q That your dad felt it was a necessity to shoot them?

A It seems like the only conclusion I could really come up with.

MR. BROWN: That is it.

Let's go back on the record. At this time I'm [52] adjourning and not terminating the interview, pursuant to what we discussed previously about his contacting Mike before I ask him any more questions about the conspiracy end of it.



And let me ask you one more question, okay?

THE WITNESS: Okay.

Q (MR. BROWN) You decided you were going to take that car, right?

A Yes.

Q And you had taken the car and had everything you wanted over into the Mazda, is that right?

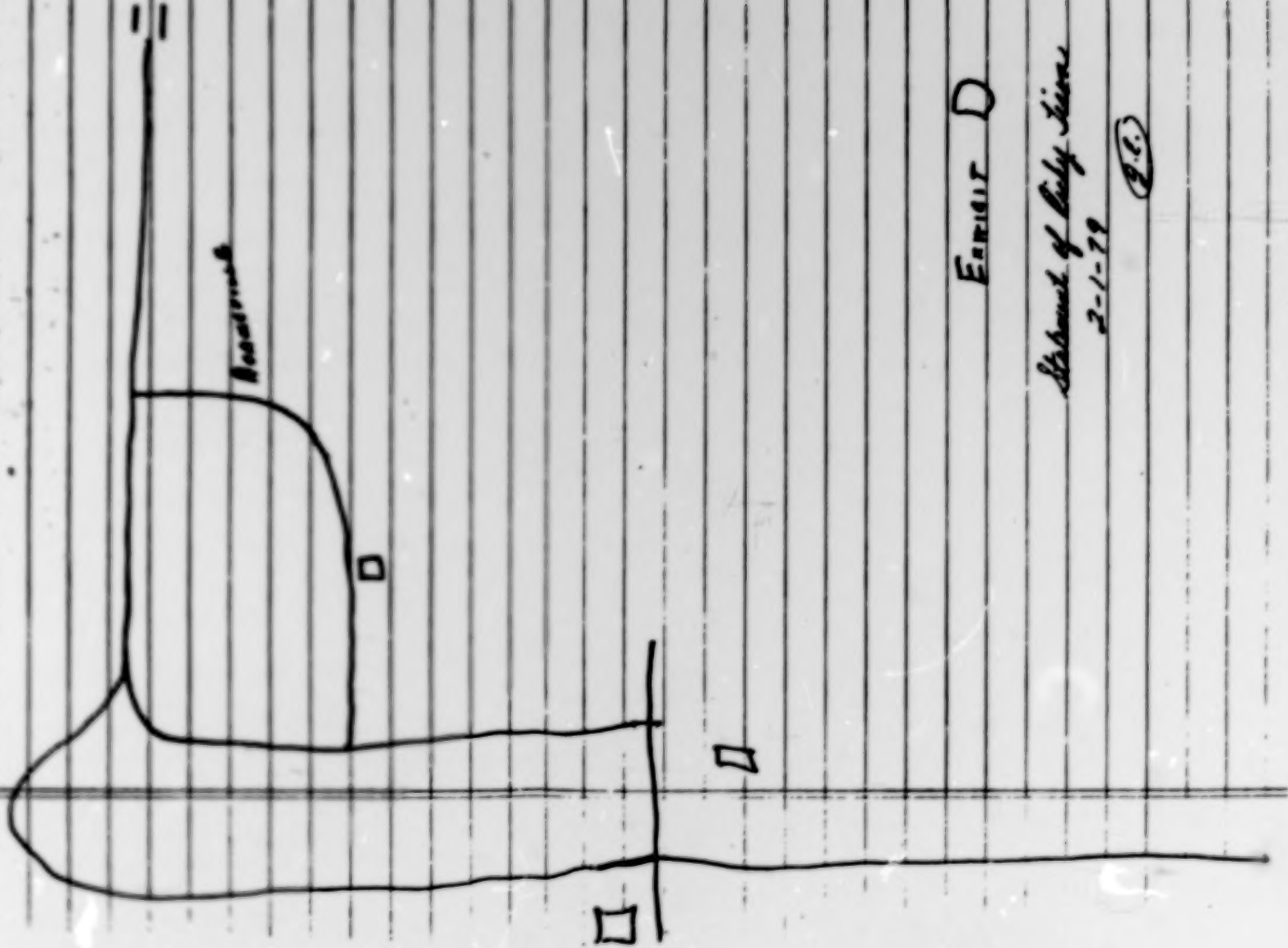
A Yes.

Q And the shootings occurred after you were completely done with that?

A Yes.

MR. BROWN: Okay.

(Certificate of Official Court Reporter  
omitted in printing)



Engraving D

Sketch of Lily Line

2-1-79

(P.C.)

SUPERIOR COURT OF STATE OF ARIZONA  
IN AND FOR THE COUNTY OF YUMA

TRIAL TRANSCRIPT— FEBRUARY 20-21, 1979

(RICKY WAYNE TISON)

. . . .

[T.R., page 103, lines 23, 24, 25]

BY MR. IRWIN:

Q. Would you state your name, please?

A. Charles Edward Whittington.

[T.R., page 104, lines 1, 2]

Q. What is your occupation, Mr. Whittington?

A. Gunsmith.

. . . .

[T.R., page 104, lines 15-28]

Q. Mr. Whittington, do you know a person by the name of Ricky Tison?

A. Yes, sir.

Q. When did you first meet Ricky Tison?

A. Oh, about a year ago.

Q. And where was it that you met Mr. Ricky Tison?

A. I met him through a cousin of his.

Q. Do you recall where it was?

A. Yes, it was in Casa Grande.

Q. Did you see Ricky Tison after that date?

A. Yes.

Q. Will you describe, please, the nature of your relationship?

A. I was trying to get a shop started at the time and

[T.R., page 105, lines 1-28]

Rick had come over and we started talking. And he just seemed like a fellow, a young fellow that was curious in gunsmithing and gun working and stuff and a pretty nice fellow in general.

Q. How often did he come over after you met him?



A. Numerous occasions. It was nothing real pronounced at first or anything.

Q. Are you able to estimate the frequency with which he came after you first met him?

A. Oh, maybe about once a month up towards, until a few months ago.

Q. What happened then?

A. Then they—he seemed to come over a lot more, mostly on the weekends. As a matter of fact just about all the times on the weekend.

Q. You indicated that you had some discussions with him about guns, is that correct?

A. Yes, sir.

Q. Did you ever discuss with him a particular gun, a Dakota .45?

A. Yes, sir.

Q. When do you first recall discussing that weapon with him?

A. It was around May.

Q. And what year was that, Mr. Whittington?

A. Last year.

Q. What were your discussions with him about this particular weapon?

[T.R., page 106, lines 1-10]

A. He seemed interested in purchasing it.

Q. At that time were you selling guns?

A. Yes, sir.

Q. Would you describe the gun, please?

A. It's a .45 calibre long Colt single action Frontier model.

Q. Did your discussions lead to a sale?

A. Yes.

Q. When did that occur?

A. About a month later.

. . . .

[T.R., page 195, line 28]

Q. Would you state your name, please?

. . . .

[T.R., page 196, lines 8-13]

Q. And what type of work do you do?

A. I am employed by Yuma County.

Q. How long have you worked for Yuma County?

A. Approximately eleven years.

Q. And what type of work is that, Larry?

A. Resident deputy with the sheriff's office.

. . . .

[T.R., page 196, lines 26, 27, 28]

Q. Larry, do you recall being on duty on the afternoon of August 6 of 1978?

A. Yes, I do.

. . . .

[T.R., page 198, lines 22, 23, 24]

A. Just a white, it appeared to be a Lincoln Continental. One of the doors was standing open on the passenger side, the rear door.

. . . .

[T.R., page 206, lines 1-7]

A. Again you have the numbers, excuse me, the letters which were taken from the original report. The orange square here indicates that this was the Lincoln Continental vehicle. The numbers in blue indicate the location of the .16 gauge shotgun shells found at the scene. The numbers in the orange indicate the .20 gauge shells found at the scene.

. . . .

[T.R., page 206, lines 12-17]

Q. Larry, did you pick up any other expended shells at this area?

A. Two .45 long Colt shells were found in the gas line road between the turn around point here and approximately where the vehicle was backed off in the desert. The Lincoln Continental was backed into the desert.

. . . .

## RECORD TRANSCRIPT—FEBRUARY 22, 1979

(Trial of Ricky Wayne Tison)

. . . .

[456] DIRECT EXAMINATION

BY MR. IRWIN:

Q. Would you state your name, please?

A. Ellis H. Salyer.

Q. What is your occupation, Ellis?

A. I am a sergeant with the Department of Public  
[457] Safety, criminal investigation bureau.Q. Where do you work for the Department of Public  
Safety?

A. In Phoenix, Arizona.

Q. And how long have you been an officer with the  
Department of Public Safety?

A. Approximately 15 years.

Q. Ellis, were you in the vicinity of Cockleburrr and  
Chuichu Roads on the date of August 11, 1978?

A. Yes, I was.

Q. What caused you to go to that location?

A. A call from Sheriff Reyes of Pinal County.

Q. And what was going on there that morning?

A. There had been a roadblock where the Tisons had  
been apprehended and the sheriff asked if I would—me  
and some of my men would come down and help with the  
interviews.Q. Did you in fact interview some person that morn-  
ing?

A. Yes, I did.

Q. And is that same person present in the courtroom  
today?

A. Yes, sir, he is.

Q. Would you indicate, please, who the person is?

A. It's Ricky Tison.

Q. Where did this interview take place?

A. In a Pinal County car on Chuichu Road at the  
scene of the roadblock.

[458] Q. You recall approximately what time this was?

A. Approximately ten minutes to 7:00.

Q. Where was Ricky Tison when you saw him just  
prior to the interview?

A. Seated in the back seat of the deputy's car.

Q. Was anyone else inside the car with him at that  
time?

A. Yes, there was.

Q. Who was that?

A. I have no idea.

Q. Did you speak with officers from Pinal County  
prior to interviewing Ricky Tison?

A. Yes, I did.

Q. Who did you speak with?

A. I spoke with Deputy Ed Harville and Tom Solis.

Q. Was it at that time that you went to the vehicle  
to interview Ricky Tison?

A. Yes, it is.

Q. Would you describe his physical appearance as you  
entered the vehicle?A. His physical appearance was, he was seated in the  
back seat of the deputy's car naked, handcuffed and had  
blood splattered on his chest.Q. Did you, or was someone with you when you went  
to the car?

A. Yes, there was.

Q. Who was that?

A. Agent Dave Sanchez from the D.P.S. Al Stooks,  
[459] Pinal County Attorney's Office.

Q. Was the defendant advised of his rights?

A. Yes, he was.

Q. Who did that?

A. Officer Sanchez.

Q. And you recall what was said?

A. He read him his rights from the standard rights  
card which is the Miranda rights.

Q. After that was done was questioning commenced?

A. Yes, it was.

Q. Did you begin the questioning yourself?

A. I believe Agent Sanchez started the questioning.

Q. Could you describe, please, how the questioning went?

A. Well, first I asked Ricky if he was okay, if he was hurt, if he needed any medical attention. He stated no. I offered him some coffee, something to eat. Again he refused.

Q. My one concern was to ascertain if Gary Tison was in fact with the group and the location of the girl that hadn't been found.

As I talked to Ricky about the—he first stated all they did was break the old man out. As I got to the point about the white Lincoln he became very excited. Said he didn't want to talk anymore. Didn't know anything about the Lincoln.

At this time I started to get out of the car when someone came by and mentioned something [460] about footprints.

Q. Did you return to the car at that time?

A. I hadn't left the car.

Q. What did you say at that time?

A. I told Ricky that there had been footprints found around the scene of the Lincoln and I asked him about what type shoes he was wearing. Again he became excited, said, "All I know is that me and my brothers didn't shoot those people."

Q. What was your next statement?

A. I said, "Okay, I didn't say that you shot those people. I'm just trying to find out what happened."

I said, "Let's just start at the beginning from when the thing first started and just go from there."

Q. Did you make some other statement to him at that time, Ellis?

A. I don't understand your—

Q. When you said, "Let's start at the beginning," what happened next?

A. Ricky said that they had—he and his brothers had been planning to break their dad out for sometime, in fact had gathered guns over a period of time.

Q. Did he state anything about who was to be involved in the breakout?

A. Ricky, Raymond, Donny, and Randy Greenawalt and Gary.

Q. What else did he tell you about the plans prior to the breakout?

[461] A. Okay, he collected guns over a period of time.

MR. BEERS: I'm going to object to any testimony about plans prior to the breakout on the grounds it is not relevant.

THE COURT: The objection is overruled.

THE WITNESS: He collected guns over a period of time, did in fact visit Gary on the 29th of July and at that visit they agreed that the next day they would break him out.

BY MR. IRWIN:

Q. Did he indicate that he had any prior knowledge that someone was coming with Gary?

A. Yes.

Q. Did he then indicate what occurred on the morning of July 30?

MR. BEERS: May I voir dire the witness briefly, Your Honor?

THE COURT: Yes, you may.

#### VOIR DIRE EXAMINATION

BY MR. BEERS:

Q. Are you referring to notes?

A. I am referring to my report.

Q. Is that the same report that I have a copy of here?

A. Yes.

MR. BEERS: Nothing further.



## [462] CONTINUED DIRECT EXAMINATION

BY MR. IRWIN:

Q. Did he say something at that time about what occurred on the morning of July 30?

A. That they met at the hospital, Pinal Hospital with a Lincoln and a green Ford. They left the Lincoln at the hospital, drove to the prison in the green Ford, did in fact break Randy and Gary out.

Q. Did he describe who met there at the hospital?

A. Donny, Ricky and Raymond met there with Gary and Randy.

Q. Did he describe the details of the breakout?

A. No, I didn't get into that, no.

Q. Did he next talk about leaving the prison?

A. They left the prison, drove back to the hospital in the green Ford, transferred into the white Lincoln, and departed leaving the green Ford at the hospital.

Q. What did he next describe, Ellis?

A. Driving back roads, just gaining time and distance between themselves and the authorities.

Q. Did he indicate that something happened during that time?

A. At one time they had a flat tire on the Lincoln. They changed it and put the spare tire on, continued on their way. They ultimately had another flat tire. Then they didn't have a spare, so—

Q. Did he tell you what happened next?

A. Yes.

[463] Q. What did he tell you?

A. That they parked along side the road and waited for the first car to come down the road.

Q. Did he tell you what kind of car that was?

A. An orange Mazda.

Q. Did he tell you what happened after that?

A. They all pulled guns on the occupants of the Mazda forcing them to stop on the roadway.

Q. Did the defendant tell you what happened after that?

A. The people were taken out of the Mazda, placed in the back seat of the Lincoln and driven about five or six miles down a dirt road.

Q. What did he next describe to you?

A. The two vehicles were parked trunk to trunk, the things in the Lincoln being transferred over to the Mazda, the people being taken out of the Lincoln and placed along side the road.

Q. Did he tell you what happened after that?

A. The Lincoln was driven in the desert 50 or 75 yards with the people still standing along side the road.

Q. And did he tell you what happened next?

A. Gary and Randy went to the Lincoln, shot a few holes in it, then asked that the people from the Mazda be brought to the Lincoln, placed in the back seat of the Lincoln.

At this point Gary told the boys to go back to the Mazda and get the water jug. About the [464] time they get back to the Mazda they hear shotguns going off. Due to the darkness all they could see was the flashes from the shotguns.

Q. Did he tell you what happened after that?

A. Gary and Randy came back to the side of the road where the Mazda was and Gary made a statement, "It sure is hard to kill a Lincoln," or, "It sure takes a lot to kill a Lincoln."

Q. Did he indicate that some property had been taken?

A. He indicated that a wallet belonging to the male subject was taken which had a couple hundred dollars in it, a .45 calibre automatic and a .38 calibre chrome plated revolver.

Q. Did he tell you what happened after his father got back to the car?

A. They all loaded in the Mazda and drove away.

Q. Did he describe what they did after that?

A. They drove to some—some small town, went to a store, went in to buy six—they wanted six cans of gray primer paint. They only had five in the store, so that is what they bought.

Q. Did he tell you what they did after that?

A. Headed north, entered a country where pine trees were. And that's where they stopped and spray painted the Mazda.

. . . .

**RECORD TRANSCRIPT—FEBRUARY 27, 1979**

(Trial of Ricky Wayne Tison)

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[571] MR. IRWIN: Ladies and gentlemen of the jury, the attorneys in the case, both [572] myself and Mr. Beers, are going to speak to you in what is known as the argument. The things that we say to you are not to be considered by yourselves as evidence in this case. If I should misstate some fact disregard those and rely on your recollection of the facts.

And in addition if I should state the law incorrectly in arguing the case disregard what I have to say about the law and follow the law as it is given to you by the judge.

At the beginning of this case prior to the taking of any testimony you as jurors in this case took an oath and the oath which you took was that you swore that you will give careful attention to the proceedings, abide by the Court's instructions, and render a verdict in accordance with the law and the evidence presented to you. Some of the instructions that are going to be given also bear on this same sort of concept that is found in the oath which you took.

This instruction reads in part, "I will instruct you on the law. It is your duty to follow the law. It is also your duty to determine the facts. You must determine the facts only from the evidence produced in court. You should not guess about any fact. You must not be influenced by sympathy or prejudice.

The reason that I mention these facts is because in this case you are going to be sort of introduced, if that is the proper term, to a concept in law, several legal concepts which hold that a person is [573] responsible for the acts of others when he aids and abets in the commission of offenses. And it also holds that a person is responsible for the acts of others when he conspires with those other persons and some act is done in furtherance of a conspiracy.

In addition to that the law that you will be given indicates that when a killing occurs during the commission of certain offenses that killing is murder in the first degree whether the killing was intentional or accidental.

Now some of you may argue with that law. You may not like it. You may disagree with it, but under the oath you have taken and the instructions the judge will give to you it is your duty to follow that law.

The other part that I mentioned in the oath and in that instruction that it is also your duty and your responsibility to try this case with fairness in setting aside any sympathy that you might have and follow the law. The reason I mention these things to you at the outset is that we have in this case a situation where the State has proved that the defendant is responsible for the crimes in this case, the murders, the kidnappings, the robbery, the theft. He is responsible for these acts even though he himself may not have been the person who pulled the trigger that did the murders. And I mention these facts because the defendant is a young man and you may have some sympathy for him, yet it is your duty in this case to follow the law and set aside any [574] sympathy that you may have.

One of the other instructions that you will be given deals with the concept of reasonable doubt and the burden of proof. And in a criminal case as we all know the State has the burden of proving the case beyond a reasonable doubt. That's the burden that is placed on the State in our criminal system and one which we accept in every case and one which has been met in this case.

When you are weighing the evidence keep in mind the concept of reasonable doubt. It does not mean to any possible doubt or beyond any possible doubt or an imaginary doubt, but beyond a reasonable doubt.

The law that governs this case will be presented to you by the Judge and in just a second I will explain that law to you. First of all, what I would like to do is go over some of the evidence that has been presented or has been

admitted in evidence in this case, but has not yet been explained to you. Two of the exhibits were admitted and I don't think these were ever posted on the board, but these are photographs of this blue four wheel drive pickup truck that was discussed by numerous witnesses. This is the blue pickup truck which was purchased by Kathy Ermentraut apparently at the time when the Mazda was abandoned and covered and buried in the forest and the pickup truck that was driven into Colorado and the pickup truck that again was abandoned in Colorado when apparently these people thought it was too [575] hot because a policeman was following them. And the pickup was turned into the Chevrolet house in Cortez, Colorado.

This exhibit was admitted, number 81, is simply another small piece of evidence in the case indicating that this pickup with the number that it contained, the serial number, was a pickup truck purchased by Kathy Ermentraut. And these are the certified registration papers on that pickup truck indicating simply that it was purchased and the date of purchase and who the owner was.

Two similar items have been discussed throughout the case, the green Ford that matches the one that was driven away from the prison. The green Ford that was found there at the Pinal County General Hospital. And again the certified registration indicating who the owner of that car is and in this instance being Donny Tison.

Here we have number 50 admitted in evidence which is simply warrants for the arrest of the defendant in this case and the other persons that were involved with him in the escape from the prison and the complaints or the charges filed against them in Pinal County for that escape.

It is the State's position in this case that everything which occurred throughout the course of events from the time of the prison break and in fact prior to that date up to the time of the capture was related to that break and the later attempts to avoid or [576] prevent lawful



arrest. And that is important, of course, as we get into this felony murder rule in a few minutes, but again we have here this piece of evidence which is simply the indication that warrants for the arrest were issued for these persons right after the time of the breakout and that law enforcement was looking for them.

Number 45 is another certified document from the Department of Motor Vehicles which is admitted in evidence. This one perhaps a little more important than the other ones. This is the registration on the Mazda which was owned by John and Donnelda Lyons and this matches the vehicle number, the vehicle that was found buried in the Flagstaff area.

One additional item that we have, number 73, which was admitted in evidence is nothing more than the Federal Firearms Regulations. Probably as all of you know if you buy a gun you have to sign for it and those records have to be kept. These are the records of the United States Government which indicate that John Lyons bought a particular gun and owned that gun, the gun that is referred to in these records. This is the gun here, the gun which Nickolas Volpicelli said he knew John Lyons had one similar to because he had fired it and used it during target shooting and a gun which at the conclusion of this case was found in the possession of Raymond Tison worn inside a shoulder holster under his arm.

These are simply some of the pieces of evidence that were touched on in this case which [577] I don't think you have been able to observe or have been explained to you yet. In just a few minutes we are going to get into some of the other evidence that was presented in this case, but first I would like to explain to you the law that is going to be given to you in the case and there are going to be numerous instructions.

In my argument I am going to concentrate on three areas which are of paramount importance in this case and very important for you to understand to perform the duty that is imposed on you.

These three areas are first of all a theory of responsibility for aiding and abetting. Secondly, a theory of responsibility as a co-conspirator, and thirdly, the felony murder rule. These instructions as they are given to you by the Judge are going to be somewhat lengthy and, if you will, scattered, but I would like to take those three areas and draw them together and show you how they work together.

Taking these three areas, and we will get into the specifics in a few minutes, the law is that a person who aids and abets or is a conspirator is guilty of first degree murder when the persons he aids and abets or conspires with kills during the commission of certain offenses. I would point out that it is not necessary that a person both aids and abets and conspires. If a person aided and abetted and a person that he was aiding and abetting killed during the commission of certain offenses he would be responsible for those killings. Or if [578] a person is a conspirator and a person that he conspired with killed during the commission of certain offenses he again in law is held responsible for the acts of the person who does the killing.

Let's take a look, first of all, at those two areas of responsibility, aiding and abetting and conspiracy. The instructions on aiding and abetting read simply as follows: All persons concerned in the commission of an offense, whether they directly commit the act constituting the offense or aid and abet in its commission, though not present, are responsible for the commission of the offense.

Pretty straightforward. It says if you assist in a crime you are responsible for that crime whether or not you are present and whether or not you are the person who actually does all of the acts in the offense. The law although it may seem sometimes somewhat complicated generally has a sort of common sense notion behind it and has the type of proposition that we are dealing here with in aiding and abetting. The law simply is if you help in

the commission of a crime you are also responsible for the commission of that crime.

Take a look at the concept of conspiracy. On this one although the instructions are quite detailed and quite long it isn't anymore difficult to grasp than the other one. First of all, a conspiracy is nothing more than an agreement between two or more persons to commit some offense.

[579] In other words, let's just take a hypothetical example. Let's say that two persons decide that they are going to rob a Circle K store. And they sit down and they discuss it and they decide they want—need some money and one of them has a gun and they decide one of them will be a driver of the car and the other one will be in the store and they go home and get their gun and head towards the store.

In this example we have a conspiracy, two or more persons agreeing to commit a crime and taking some step towards that crime, getting the gun or driving towards the store. That's all a conspiracy is, an agreement between some persons to commit some offenses.

Now once the conspiracy has been formed and those persons are members of that conspiracy this rule follows: A person who conspires with others to escape from legal custody to avoid or prevent lawful arrest, to perpetrate or attempt to perpetrate robbery or kidnap is responsible for the acts later committed by the co-conspirators as a part of and during the conspiracy.

Let's take our example. The two have decided to rob the Circle K and the one drives the other to the store, drops him off, and waits outside. The second one goes into the store and pulls the gun and the clerk offers some resistance and the one that is in the store shoots the clerk. Under this law as the judge will read it to you a person who conspires with others is responsible for the act later committed by the co-conspirators as a part [580] of or during the conspiracy. The person who is sitting out-

side in the car waiting is responsible for the acts of the person who is inside the store holding and using the gun.

Again as we saw in aiding and abetting we have a legal theory which places responsibility on persons who participate in crimes even though they themselves may not be the main person involved, even though they themselves may not be the person who does the actual act, they are responsible for the acts of persons which they assist.

Here we have two theories of legal responsibility and again there is a common sense reason for these theories. Generally speaking if you have a situation where one criminal is aided and assisted either in a conspiracy situation or in a direct aiding and abetting situation by other persons that situation is potentially more dangerous. And that is why the law places the responsibility that it does on all persons who aid and abet or become conspirators in an offense.

Let's look at the facts that we have in this case. Here we had five persons who were involved in an escape and a flight from the prison, attempt to avoid or prevent lawful arrest. And they had a flat tire on their car, the car they were using to take them away from the prison and to take them away from the authorities. And their car was disabled and they were stuck in a position where they may be discovered.

[581] What did they do? This group of people using their guns stopped someone and stole their car from them and to hide the crime murdered these people and left in the car. And we had a group of people doing this, five persons including the defendant. And his participation was to pull a gun on the people and to aid in the robbery and the kidnap.

But let's assume for just a minute that we didn't have five people here. Let's say that Randy Greenawalt escaped from prison and took off in a car by himself and he had a flat tire and he flagged down John Lyons and his family. What could have happened in that situation? John Lyons and two other persons who had some weapons with



them? Do you think that Randy Greenawalt could have controlled all of those passengers and carried out what occurred in this case? Or any one of the other individuals? I think that you will see that when you have a group of persons acting together to commit certain offenses you have a situation that is much more dangerous than one person acting alone. And that's the reason we have these theories of responsibility because if one person assists in the commission of an offense either as an aid or an abettor or as a conspirator the law holds him responsible for the acts of all of those persons acting with him, whether or not he does everything himself or not.

Let's take a look at this felony murder rule and in this sort of diagram that I have drawn up here. By the way, this diagram isn't intended to [582] be all of the law concerning these. The instructions are quite a bit more specific than this, but they are designed to be a summary, if you will.

The bottom portion, as I mentioned, of course here we have the two theories of responsibility and here the—what is known by lawyers in a shorthand way, felony murder rule. And let's take a look at the felony murder rule.

You have all heard about murder before and probably most of you when you think of murder think of it in the premeditated type situation versus a killing in the heat of passion or an argument situation, but there is another kind of murder that is all together different from that and that is what we are talking about here, the felony murder rule. And the felony murder rule is simply that a murder or a killing, whether it's accidental or intentional, is murder of the first degree if that killing occurs during certain specific types of criminal acts.

In this case we are involved with four specific types of criminal acts and the rule as it applies to this case and the instructions will say that a killing which occurs during a robbery or a killing which occurs during a kidnap or a killing which occurs during an escape, or a killing

which occurs during avoiding or preventing lawful arrest is first degree murder.

We have got four separate instances listed here and that is because this case deals [583] in evidence in these four areas, but it is not necessary that each and everyone of those be present; for example, a killing only in avoiding lawful arrest is first degree murder regardless of whether or not these were proved.

There is one additional requirement and that is that the killing is connected to the offense and the killing must be committed as part of a continuous transaction and closely related in time, place, and causation, so we have here under this theory a situation where a person who aids or abets or a person who conspires with others is responsible for a murder or killing done by those persons if it is done under any one of these particular circumstances.

What are some of the facts in this case? Let's ask this question as to each and every type of killing that might occur under this felony murder rule. And let's ask the question whether or not the defendant aided and abetted in each one of those or conspired in each one of those.

Let's take first of all the offense of robbery. The Judge will instruct you that robbery is essentially the taking of property from another person by the means of the use of force or fear or violence. I think it is abundantly clear in this case that there was a taking of the property of John Lyons and there was a taking of the property of Donnelda Lyons. We are talking about their car and the weapons that were taken from them and the money that was taken from them.

[584] An armed robbery is nothing more than a taking by means of or use of force or fear while armed with a deadly weapon. Was there force or fear used? Obviously force was used and obviously their property was taken.

Did the defendant aid and abet in that robbery? The defendant, the evidence shows in this case, waiting with the others and when the car stopped, pulled his gun the



way all the rest of them did and went with the family into the desert and assisted in the transfer of both the prisoners, the captives, if you will, John Lyons and his family, to the Lincoln and the taking of the property. And after the property was taken he rode away in the vehicle that had been stolen and again the evidence is clear that the defendant aided and abetted in the robbery.

He was a participant in that robbery. The killings were connected to that robbery. They occurred during it. Although it is not necessary that the killings actually occurred immediately during the commission of one of these offenses as the Judge will instruct you as long as it is closely connected in time or place or causation.

In this case the killings occurred before they left in the stolen property, before they drove away in that Mazda and is closely connected.

Even though the State has not proven that the defendant pulled the trigger the State has [585] proved that he aided and abetted in the robbery and that he participated with other persons in that robbery.

Let me mention one thing that I perhaps forgot to mention a few minutes ago when we were talking about conspiracy. One of the instructions that you will receive is that the acts and statements of persons is the kind of evidence that you may use to find that a conspiracy existed. And let's go back to our hypothetical situation of the Circle K robbery because it may not be that you will find out that these two persons sat down, they sat down together and planned out this thing, but you know that they drove to the store together and they acted together. One went in while the other waited in the car as a get-away or lookout and you can tell from their actions that there was an agreement between them.

The agreement in a conspiracy does not have to be a written agreement, but can be an informal agreement to do some criminal act and to find out whether or not there was some conspiracy you may look at the acts of all the persons when we are talking about the robbery in this case.

What I'm suggesting to you is that the acts clearly indicate that there was a conspiracy to commit robbery because there was a concerted action by all persons in pulling the guns, in transporting the people into the desert, and changing the luggage. Everyone was helping out and these acts clearly indicate that these persons agreed to act together because the defendant aided [586] and abetted in this robbery and because the defendant was a co-conspirator with all of these persons. He is responsible for the killings which occurred during the robbery.

The second thing that was listed under the felony murder rule is a killing which occurs during a kidnap. Again it falls under the felony murder rule and a person who aids and abets or conspires with others in the commission of that offense and if a killing occurs during the commission of that offense that person is responsible under the felony murder rule. And again the facts are very similar for the kidnapping.

We know that John Lyons left home sometime between 11:00 o'clock on the morning, or on the night of August 1st—excuse me, July 30-August 1st. I don't remember the date, but if you do you recall the date during your deliberations whichever night it was. He left late that night and between the hours of 11:00 p.m. and 2:00 o'clock the next morning he was on his way at that time in his Mazda with his family to Las Vegas. And they didn't get very far.

They were taken from their Mazda. They were robbed and murdered and left in a Lincoln which we know was turned over to the defendant sometime before the prison break. And we know how that happened from the statement that was given and those facts indicate that just as there was a robbery there was a kidnapping.

The Judge will explain to you [587] that the kidnapping is the taking of some person or holding of them to commit robbery and that is essentially what kidnap is, somebody stopping and holding them to commit rob-

bery or moving some person against their will by the use of force. And again clearly the facts indicate in this instance that there was a kidnap and that the defendant in this case aided and abetted and was a conspirator with the persons who kidnapped and the evidence again is clear that a killing occurred closely connected in time, place, and causation with the kidnap. And further for that reason the defendant is responsible for murder in the first degree.

Going back to the felony murder rule, as you recall there were two other specific types of offenses during which if a killing occurred those persons who were involved in that are responsible again for murder in the first degree. One was an escapee, the other is in preventing or avoiding lawful arrest. Did an escape occur?

Again the evidence is clear that the defendant participated in that escape. Certainly he did. He obtained all the weapons. He walked into the prison with those weapons. He used one of those weapons to hold a prison guard, prison guards in a control room while the escape could be effected. And he left in a vehicle, several vehicles with the other persons in an escape from that prison.

When was that escape complete? I don't know, perhaps it continued for two weeks. We know [588] that the defendant and the persons he was with were involved in a process of trying to hide their whereabouts for all of the time they were out because of the various things they did, camping out in remote areas, switching cars as often as they could, burying evidence of their presence, and finally being chased in a high speed chase through a roadblock. That escape began on the 30th of July and continued until the time they were caught.

Was the defendant an aider and abettor in this escape? Yes. Did he conspire with others? Again the facts show that he was acting in concert with the other persons. And did a killing occur as a part of that escape? We know where the killing occurred because their escape vehicle

was disabled and those killings were a part of that escape. And because the defendant aided and abetted and because the defendant was a conspirator in the escape and because a killing occurred as part of that escape the State has proved that the defendant is guilty of first degree murder.

There was one additional factor under the felony murder rule and that is a killing which occurs during the preventing or avoiding lawful arrest is a first degree murder-killing. And all persons who are connected in that as aiders or abettors or conspirators is guilty of the murder committed during the avoiding or preventing lawful arrest.

The facts throughout the case from the time of the prison break until the time of the [589] capture clearly show what this group of persons was involved in, their actions in stealing the car, the very reason that John Lyons and his family were murdered, their acts after that in switching cars, if they thought they were too hot or disguising evidence of the murders clearly indicates what was going on throughout this period of time, but I think there is probably one single fact alone that speaks louder than any other that that group of people was involved in a conspiracy and a direct attempt to avoid and prevent lawful arrest and this single fact, if you will, comes from what occurred on the 11th of August of 1978.

As you will recall this van approached the roadblock that deputies were manning late that night, early morning of the 11th. And the deputies were out there not particularly expecting anything and they saw a car coming up and started walking towards it. Shots were fired and a chase ensued. The van sped down the highway some eight or ten miles going about 95 miles an hour and officers chased and shots were fired from the back of the van and finally the van as it went through a second roadblock the driver was killed and the van run off the road and several persons ran out into the desert.



And the officers that were there stood guard. The covered the area for a period of time until they received some assistance in the form of lighting in the desert. And then they began arresting people.

[590] Now the first thing that one of the officers did, this was Officer Wade Williams, he walked over to the van and he found Donald Tison and he found on the floorboard of that van a loaded .38 automatic weapon. And he collected that weapon. And this is that weapon here.

And the helicopter came and the officers spotted the people in the desert and they asked Ricky and Raymond to get up and come in. And they did. And Raymond came up and Raymond had in a shoulder holster another weapon. Again as I pointed out to you before this was a weapon that John Lyons owned, the Smith and Wesson .38 air weight. And Sergeant Lopez took this gun from him.

The next thing that happened is Ed Raastadt and Deputies Grebb and Jewell walked into the desert where Mr. Greenawalt was at. And they arrested him. Deputy Raastadt picked up another weapon. And that is this weapon here. And at the same time Deputy Sheriff Grebb reached down to Mr. Greenawalt and picked up another weapon, a .357 with the long barrel. This gun.

Deputy Jewell then went out into the area of the desert where Ricky and Raymond had been lying and he picked up several more weapons. The first one he found which was in the possession where the defendant in this case was, a weapon that has been described by Mr. Whittington as belonging to, or being sold to the defendant and had blood on it as did the defendant was this weapon.

And Deputy Jewell went to the [591] position where Raymond Tison was and he picked up this weapon. And at that point in time the general area was secured until Detectives Harville and Solis began processing this Ford van that had crashed. And they started taking from that Ford van various weapons.

From the back of the van came this .22 revolver. From inside the van came this .25 automatic pistol. From the back of the van came this .380 Erma and this silencer which fits on it. From the back of the van came this sawed off shotgun. From the back of the van came this sawed off shotgun, incidentally, one of the murder weapons in this case. And from the van came this weapon, again one of the weapons used to murder John Lyons and his family.

And several days later the body of Gary Tison was located and found underneath the body of Gary Tison was another weapon, this one, a .45 calibre automatic pistol which again was the property of the victim, John Lyons.

And as I said to you a few minutes ago I think there was one fact more than any other which indicates what these people were doing, and that is this: These people were involved in an attempt to avoid or prevent lawful arrest and here's the single most important fact that points that out. This group of people was armed to the teeth and ready to do anything they had to do to avoid or prevent lawful arrest.

Was the defendant in this case [592] an aider and abettor in that? Yes, he was. In fact, he himself had obtained many of these weapons. He himself had taken some of them into the prison. He himself had used one of these guns and placed it a foot from the head of a prison guard and assaulted that prison guard. He himself aided in the capture of John Lyons and the family and the robbery of them and the kidnap of them when they had no car to travel in.

He himself aided in the disguising of the car, buying paint to paint it and painting it and later hiding it when it was too hot. He himself helped the group remain out, bought them supplies, went into the store, possibly because Randy Greenawalt and Gary Tison were too well known and would like to stay out of public places.



The defendant went into stores for them to buy groceries and he continued with them from the beginning to the end. He helped in the preparation for it, he aided and abetted in the attempt to avoid lawful arrest and he was a conspirator in the attempt to avoid and prevent lawful arrests.

And these killings, the killings that occurred, occurred as a part of this avoiding lawful arrest. The car was disabled. They needed a car and the victims were killed. The defendant aided and abetted and was a conspirator in the avoiding of lawful arrest and he is responsible for the acts of this group of people in murdering John Lyons and his family.

[593] Now there are several other offenses involved in this case and I have been through most of them under the felony murder rule; for example, you are going to in addition to the murder charges be required to consider whether or not the defendant is guilty of robbery, kidnap, and theft and you will receive instructions on those. Again those are separate charges which you must consider.

Theft, I haven't mentioned it before, it is simply the taking of the property of another and in this instance we are concerned with the theft of a motor vehicle with intent to permanently deprive. Again the evidence is clear that such a theft occurred and the defendant aided and abetted in that and that the intent was to permanently deprive as that vehicle was buried in such a situation. And the circumstances were such that—it was never intended that that vehicle would be returned to the owner after a short period of time.

The defendant has brought before you certain character witnesses and the judge will read you an instruction on how to evaluate character witnesses and what weight their testimony should be given under the facts of a particular case. I don't want to go into that in any detail.

I would like to point out however, that those persons except for one, I think, the fellow from the pizza place, with the exception of him those persons were persons who have known the defendant for many, many years and they have, if you will, they have [594] certain opinions about his character based on their acquaintanceship with him over this period of time, but I think we all realize that a person as they grow up, as they become 18 they become adults and the law holds them responsible for their acts.

A young boy age ten growing up, when he gets to the age of 18 the law presumes him responsible for what he does and he has to make a decision at that time in his life, young adulthood, which way to go. And some of them choose to go the right way and others as the defendant in this case choose a path that is wrong.

It has been asserted by the defense that things which occurred elsewhere other than at the location of the Palm Canyon Road have nothing to do with this case. That is not correct. Just as an example we have a lot of physical evidence which relates to this case which comes from many of the different areas, things that happened before the prison break.

For instance, we know that Joe Tyson gave this very same vehicle that the victims were found in to the defendant in this case. We know that the murder weapon and several other weapons were in the defendant's possession before the prison break. We know, for instance, that the Dakota .45 long Colt was a gun that the defendant himself purchased and the day before the breakout purchased ammunition for it.

We know that he had the Sweet 16, the Browning automatic, semi automatic shotgun in his [595] possession, one of the murder weapons, before the prison break. We know that he had that forehead .12 gauge shotgun in his possession from the testimony of Mr. Whittington, so what I'm saying is that things that occurred before

this case, before the murders, does have some bearing on this case and does have some relevancy.

Again Wenden, Arizona. Here we have the defendant purchasing spray paint several hours after the murder, not too many hours after the murder if you compute the distances and the times involved, a very short time after the murders. Buying paint to hide those murders, to spray paint the car, the property of the victim.

Flagstaff, we have the defendant helping the group by purchasing groceries for the group and in Colorado we have the group ditching this pickup truck when they believe it to be too hot because they are followed by a policeman.

And in Casa Grande, again we find the victims' property in the possession of these people and the murder weapons in the possession of these people. So what happened in Florence, what happened in Wenden, Flagstaff, Cortez, and back down in Pinal County south of Casa Grande does have relevance to this case and is important to the case, but other than those, the physical evidence, there is a much more important reason why all of these other places are important to this case and that is to do with the theories of responsibility that I mentioned to you earlier, conspiracy and aiding and abetting.

[596] And the evidence from all of these places show that the defendant was aiding and abetting throughout this whole time, both in the commission of the robberies and kidnaps and the avoiding and preventing lawful arrest in the escape. We know from those facts that the defendant in this case participated by obtaining these weapons. We know that these weapons he had in his possession before the break and at sometime before the break they were modified by sawing off the barrels and the stocks. We know that that part of the plan included an escape vehicle and that the defendant himself had received that escape vehicle sometime before the prison break.

We know that the day before the prison break the defendant himself purchased ammunition for various weapons including his own gun which he had both prior to the breakout and at the time that he was captured. We know that in Wenden the defendant purchased paint to hide evidence of the murders and we know that he continued with that group after that time.

What this group of persons did throughout this period of time was attempt to avoid arrest and prevent lawful arrest and the defendant in this case participated in that from the beginning to the end.

Mr. Beers during his opening statement indicated that the evidence would show that the defendant did not condone or anticipate the killings. The evidence is to the contrary. The evidence shows that the defendant helped the two inmates of the Arizona State Prison [597] escape from that prison and the evidence shows that he put in their hands the guns that were used to murder the victims in this case. And in essence he bought the ammunition for them and gave them those guns and turned them loose in the State of Arizona.

The evidence shows that the victim himself bought the ammunition—excuse me, the defendant himself bought the ammunition for his own gun. If he didn't anticipate that guns would be used why did he buy ammunition for his own gun on the day before the escape?

One of the guns brought into the prison during the escape was the Erma .380 with a silencer. Why was there a silencer with this weapon if it wasn't anticipated that that gun would have to be used? Why did the defendant collect an arsenal of weapons that we saw here if it wasn't anticipated that those weapons would have to be used? And why did the defendant himself take one of those sawed off shotguns and place it to the head of a prison guard if he didn't anticipate that violence would have to be used?

And Mr. Beers indicated that the defendant was very sorry for what happened, but what great sorrow did he



express when he told the officer that it was all worth it to be with his father? What great sorrow did he express when he walked into the Kibee Store in Wenden, Arizona, some hours after the shooting? Did he say, "Mrs. Stott, something terrible has happened?" No, he bought paint to disguise evidence of the murders.

[598] And what disgust did he show by staying with the same group of people for ten days after that murder and when they were finally captured to grab his weapon, not his shirt, and run into the desert with that gun? This evidence does not show a person who was sorry over what happened. It does not show someone who was somehow surprised at what happened. The evidence shows that the killings were part of this plan from the very beginning and that is exactly what happened when they were necessary.

Mr. Beers indicated in his opening statement that what the defendant did was consistent with wanting the victims to live. And I guess he is probably referring to the fact that the defendant was asked to go get some water. I don't know. Maybe he will explain that, but again the facts are not consistent with the defendant wanting these victims to live.

We know that Teresa Tyson lived for some period of time. She was able to crawl across the desert some two-tenths of a mile with a wound to her hip where she died. How long did it take her to get there? Was she alive when the defendant went into the store in Wenden?

Ladies and gentlemen, the defendant in this case participated. He was an aider and abettor. He conspired with the persons who did the murders. He is responsible for those murders and I at this time will stop talking to you for a few minutes. Mr. Beers is going to speak with you and when he is finished I will return to answer, perhaps, some of the argument that he raises.

[599] THE COURT: Mr. Beers.

MR. BEERS: Ladies and gentlemen, I am now going to speak to you in much the same manner that Mr. Irwin

has spoken to you and I want to join his request that you decide the case based on the evidence.

He talked about an instruction that you are going to receive that you must not be influenced by sympathy, but he left off the last two words of the sentence. You must not be influenced by sympathy or prejudice. There is not one member of this jury that did not know a lot about this case before you walked in. You have all taken an oath to judge this case based on the law and based on the evidence. I am depending on you to follow that oath because the evidence in this case indicates that Ricky Tison is not guilty under the law.

Now I'm going to argue the law to you before I get into the facts. The law is very complicated. Mr. Irwin has charged Ricky under a relatively complicated statute, a very technical statute, so my arguments are going to be technical to you, but at all times during his argument and my argument and when you review the instructions and you listen to the instructions please concentrate on exactly what Ricky did. Ricky's participation, Ricky's intent.

Now the State has conceded that they intend to convict or at least try to convict Ricky Tison of four brutal murders that he did not commit, four murders that he did not plan and four murders that he did [600] not know about in advance. They intend to convict him of those murders by taking a long round about trip through the events of him breaking his father out of prison all the way through the time that he was arrested. They intend to prove it by very, very technical language, some of which Mr. Irwin explained to you and some of which he did not.

The State, according to Mr. Irwin, has three separate theories. In reality it only has two. The first theory he referred to is the theory of aiding and abetting.

If somebody aids and abets in the commission of a crime he is equally guilty with the person who actually commits it. There is absolutely no evidence, none what-



ever, that Ricky aided and abetted in the murder of those people. None.

When you get right down to it the State has two theories, two theories that are somewhat supported by the evidence. Theory number one is the conspiracy theory. Mr. Irwin told you that the acts and statements of a conspirator when said or done in the furtherance of a conspiracy are binding on all the other members of the conspiracy. He didn't read you the next sentence.

The next sentence reads, as follows, and this is what the judge will tell you: However the acts and statements of a conspirator are not binding on other participants in the conspiracy if they occur after the object of the conspiracy has been consummated.

[601] Now let's look at the evidence that we have of conspiracy. There was some evidence, most of it came on the first day of the trial, Joe Tyson testified to the effect that there was a conspiracy that he participated in to break Gary Tison out of prison.

Mr. Whittington got on the stand and testified about Ricky getting guns and planning this prison break. There is evidence of conspiracy to break their father out of jail.

Let's take a good look at exactly what that evidence is and exactly what the nature of that conspiracy was, keeping in mind at all times that a conspiracy is like a book. It has a beginning, a middle, and an end. Often times people are captured early on in the conspiracy, so you never find out the middle or the end.

Sometimes the conspiracy breaks up in the middle, but there are three parts to this conspiracy.

The beginning of this conspiracy was the plan, the plan to break Gary Tison out of prison. And we have testimony to the effect that there was a plan. I don't remember precisely what the officer said about Ricky's statement concerning the plan, but I think you have sufficient evidence to determine that there was a basic plan to break Gary Tison out of prison. And I will not

dispute that even though I have grave concern about discrepancies in Joe Tyson's testimony, but I think you could find there was a plan.

[602] But then we go onto the middle of the conspiracy, the illegal action itself, the purpose of the conspiracy. The illegal action was the breaking of Gary Tison out of prison that took place.

We had testimony, Ed Barry came in and testified about how that took place. This conspiracy had a middle in the illegal action that was successfully pulled off, if you will. They did escape. No shots were fired. Nobody was injured. The conspiracy was a success.

At that point we come to the end of the conspiracy and the evidence we have of when this conspiracy ended is part of Ricky's statement given at the scene of his arrest.

Now I'm going to be referring to Ricky's statement quite a bit and I want you to be all aware of the fact that he made three separate statements to three separate groups of officers; that these statements were made shortly after his arrest; that he had no lawyer present and that there are things in the statement that hurt Ricky and things in the statement that help him. Finally I want to remind you that the prosecution has apparently accepted these statements as true and put them on as part of their case. I am willing to accept the statements as substantially true also and the only evidence we have about the full scope and full nature of this conspiracy is what Ricky told Tom Brawley in the most comprehensive statement that he gave.

[603] "Then Ricky told me that they were just going to break out Gary Tison and Greenawalt and leave them on their own." That to me is pretty strong evidence that that conspiracy to break him out ended when they broke him out.

There are other pieces of circumstantial evidence that indicate that the conspiracy probably ended at that point. I think the most telling piece of circumstantial evidence is the getaway car or the lack of a second getaway car.

The five of them left in the Galaxy and then drove across the town of Florence, got in the Lincoln Continental and left. There were no extensive provisions for a long layover, none that have been presented in evidence anyway. None that I know of. There was no second getaway car.

If there was some sort of long term conspiracy to get out and avoid lawful arrest and go all over Arizona as Mr. Irwin tells that there was it certainly wasn't planned for. Now that is not consistent with the kind of planning that obviously went into that escape. They went in there with guns and broke two people out of prison. That doesn't happen very often and it indicates there was careful planning for that escape, but no planning for the subsequent so-called avoiding of lawful arrest.

It seems clear that to the extent that there was a conspiracy in this case it ended [604] after they got those two men out of prison and once the conspiracy ends I don't think that under the law, and again I'm going to ask you to follow the law, that you can impute the acts of Gary Tison and Randy Greenawalt to the other three people involved. The acts of Gary Tison and Randy Greenawalt, as far as I am concerned, they are beyond description.

Mr. Irwin has presented evidence of what happened to these people that were murdered. He has argued briefly about it and I expect that he will argue extensively about it when he gets up again. These are some of the most gruesome murders that any of us will ever have to deal with in our lifetimes and I should ask you not to be inflamed by it and to judge the case on the evidence. I am not so unrealistic as to do that. These murders inflame my passion and infuriate me and I have dealt with this case a lot longer than any member of this jury, so I am not going to ask you to not be inflamed by them; you would have to be, or you wouldn't be human beings.

What I am going to ask you to do is to direct your anger to the people that deserve it, to Gary Tison and Randy Greenawalt. They killed those people. They killed them in cold blood and they killed them for no reason. Ricky Tison did not kill those people. All the evidence that we have indicates that Ricky Tison did not know those people were going to be killed.

Regarding what happened, exactly what did happen as the Lyons family was pulled over as they [605] were driving down the road. They were taken into the desert in the Lincoln which was driven by Gary and Donald Tison; that the Lyons were driven into the desert, the property was transferred from car to car. Keep in mind it was transferred, the Lyons' stuff was put in the Lincoln and the Tison's stuff was put in the Mazda. If there was any intent at that point on the part of Ricky to murder these people why would he bother carefully packing their property into the Lincoln?

There is an exhibit in here somewhere of a picture of the trunk of the Lincoln. And inside that trunk is an overnight bag identified as belonging to the Lyons. I don't remember what exhibit number it is. I'm sure you can find it. You will have all the exhibits in the jury room with you.

Then Gary Tison drives the Lincoln out into the desert and people are in the back seat. The Lincoln is disabled by shooting through the engine block making it undrivable. At this point Gary Tison tells the boys to go get some water for the people. Ricky Tison had no idea that these people were going to be murdered. Why would he go get water? Why did his father deceive him like this? I don't know. We will never know because his father is dead and can't tell us.

Why did Greenawalt go along with this? I don't know. I would like to know. Whatever the case, Ricky went back with his two brothers to the road to get water for those people.



[606] Now why would you need to get water for the people? Well, they are out a couple of miles in the desert. It is the summer and the car, the car they have been left with has been totally disabled. Logically they are going to need water. They are going to have to walk back to the highway and get a ride. Everything he did was consistent, just like I told you in my opening statement, everything he did was consistent with those people staying alive.

Now Mr. Irwin argues and this is something that was totally new to me that I heard for the first time in his opening argument that Ricky was a part of a conspiracy to commit an armed robbery and part of a conspiracy to commit a kidnapping, then he goes from that. He says, "Okay, Ricky was part of the conspiracy to commit armed robbery; therefore, the armed robbery is imputable to Ricky. The armed robbery is imputable to Ricky and the killings that occurred after the armed robbery, the actual killing occurred after the robbery was over and that means the killing is imputable to Ricky. That is not and cannot be the law. The instructions will clarify that for you beyond any question.

The Judge is going to define murder for you. Part of the murder instruction really does not apply to this case. It applies to the situation of the standard normal murder where one person kills another person. It would apply in Randy Greenawalt's case or Gary Tison's case if he was alive. It does not really apply, [607] though, in this case.

The second part of the murder instruction does. This is, I think, what Mr. Irwin was talking about when he talked about the felony murder rule. I haven't noticed any reference to the felony murder rule in it. The instructions the Judge will give you say that—that basically that instruction says if a murder is committed in the course or in the attempt to perpetrate some of these crimes, then it is first degree murder. It goes on to say an accused cannot be convicted of murder under these

circumstances unless the death and perpetration of or attempt to perpetrate the crimes are part of one continuous transaction and are closely connected in point of time, place, and causal relation.

That is an instruction that would be very difficult for you to deal with. The concept of the causal relation when reduced to its basics causes lawyers more intellectual difficulty than any other concept in the law. I will attempt to explain it to you briefly here, but in the last analysis it will have to be your decision.

The key to this is that the murders and the crimes must be closely connected in point of time, place, and causal relation. The closely connected in time, the crimes of armed robbery and kidnapping took place very close in time to the murders and they are closely connected in place. The crimes of armed robbery and kidnapping took place in an area very close to where the [608] murders took place. Are they closely connected in terms of causal relation? That is the question that you have to answer.

There is two parts to that question. Did the armed robbery cause the murders? And did Ricky's alleged participation in the armed robbery cause the murders? Or did Gary Tison and Randy Greenawalt acting pursuant to some murderous urge that they must have had, did they cause the murders? Which one is it? Did Ricky's participation in the armed robbery cause those people to be murdered, or did some bizarre character trait, the basis of which is known only to Randy Greenawalt and Gary Tison's ghost, did those outrageous actions cause the murder or did Ricky's alleged participation in the armed robbery cause the murders? That also goes for the kidnapping, the escape and avoiding lawful arrest and for what other crimes Mr. Irwin will try to convince you apply to this case.

You have to determine and you have to determine that beyond a reasonable doubt before you can convict Ricky. You have to determine that what he did, his



participation to the extent that there is even any evidence of it. I'm not real sure what the evidence is concerning participation in the armed robbery; however, it is clear that he was there, so you might be safe in assuming that he participated. I don't know, that is a question you will have to answer.

Assuming you do answer it yes, [609] was his participation, did that cause the murders or did Randy Greenawalt and Gary Tison cause the murders? It seems pretty clear to me that Randy Greenawalt and Gary Tison caused this murder and not any actions on Ricky's part contributed to the murders in any way whatsoever.

This again, this argument, also applies to the conspiracy. We do have evidence of the one conspiracy we talked about earlier in Mr. Irwin's argument to the effect that there must have been a conspiracy to rob and kidnap, he says there must have been because it happened. Let's look at all the evidence.

Conspiracy seems to me to be members of the conspiracy acting on a more or less equal footing. Were these five people that night on an equal footing with each other? I don't think so. We can go back to some of the testimony we have heard in the trial.

I don't know if you remember Ed Barry. He was the prison guard who came in and testified. Part of his testimony, although it didn't seem too much to the point at the time, was that Gary Tison had a very strong personality and that in his opinion after knowing Gary Tison for quite sometime that Gary Tison did exercise a fair amount of influence over the other inmates.

We have Virginia Moore's testimony that Ricky visited his father on an almost weekly basis. We have Kathy Ermentraut's testimony quoting Donald Tison stating something to the effect of "dad seemed to change after we got him out of prison. I'm tired. I want to stop. [610] I want to rest."

I don't remember his exact words. Check your notes, but something to the effect that "dad has a knife to all

our throats." Now this is something that Donald said. Donald is not alive to confirm that today, but it is some more indication that perhaps these people were not on an equal footing with each other.

And finally as some indication of Ricky's devotion to his father we have the statement that he made to Detective Salyer, but Mr. Irwin seems to put such a gruesome connotation on the statement that it was all worthwhile to have a father for ten or twelve days. Regardless of what Ricky could have meant by that statement it's obvious there was an extreme devotion to his father. From that I think it's pretty obvious his father was in control of this whole operation and that we don't have a situation of a conspiracy in what happened in Quartzsite, we have a situation of a man leading his sons to rob these people, inducing them to do so by leading them to believe that no one would get hurt. And then only when everything was finished, it probably takes it out of the so-called felony murder rule, anyway only when everything was finished did he send the boys away to get water and turn around and murder those innocent people. That is probably what happened. That is what we can deduce from all the evidence that we have at our disposal.

Now let me talk for a minute about Ricky's statement that it was all worthwhile to have [611] a father for ten or twelve days. Mr. Irwin seems to think that what Ricky was saying is it was worthwhile for these people to be murdered "so I could have a father for ten or twelve days." Well, if you think that is what Ricky meant you are certainly free to think it, apply it in your deliberations, but that meaning is not supported by any of the evidence we had today.

What else did Ricky think about these killings? "None of this was supposed to happen. The killings were a bunch of shit. We were really upset with our father and Greenawalt because of the killings. We thought it was stupid and that no one should have been killed." That's what Ricky felt about the killings.

Now Mr. Irwin made an argument that I did anticipate, but I'm upset that he made it. He argued to you that if Ricky Tison wanted these people to live, if he really cared about them and if my interpretation of the case is true, then why didn't he go to make sure that they were dead? Why didn't he help Teresa Tyson? Why didn't he go in and report this to the police so that maybe an ambulance could have gotten out there and saved Teresa Tyson's life?

Probably he didn't do it for very much the same reasons that Officer Wade Williams didn't give Donny Tison any first aid. After Ricky saw what happened to the Lyons, being shotgunned to death, numerous shots, I don't know how many shots were fired in the car, but 18 shells were found in the vicinity, numerous shotgun [612] blasts from very close range from two different assailants, any rational beings would assume that those people were dead on the spot. I wish he had gone back and checked. Teresa Tyson might still be alive, but it does not indicate that Ricky wanted them to die. It doesn't indicate anything at all, just like Wade Williams not giving Donny Tison any first aid even though he was alive doesn't make Wade Williams a killer. It doesn't make him a killer because although he didn't state this the only rational assumption Mr. Williams could make under the circumstances was that Donny Tison had such a severe wound he was going to die and there was nothing that could be done.

That action on Wade Williams' part and on Steve Grebb's part and on everyone else's part was at that roadblock does not make them killers and Ricky's failure to get, attempt to get aid for Teresa Tyson does not make him a killer either. That's why I am upset that Mr. Irwin made that argument. I don't think it's a fair argument.

Now I haven't talked to you at all about the concept of reasonable doubt. It's a concept that—it's beyond the ability of the best legal philosophers in the world to define

exactly what reasonable doubt is, so in the practice of law we have attempted to come up with some kind of written construction that will assist you in making your determination of what reasonable doubt is, but I think the word itself is instructive of what it means. The State is obligated to prove its case, [613] not part of its case, but every single part, every element of its case beyond a reasonable doubt.

If they fail to prove even one portion of their case beyond a reasonable doubt, then you must acquit the defendant. Now reasonable doubt is a doubt that you have a reason for having. It is not a doubt that you automatically have. It is something that is based on a reason, but I think the evidence in this case has given you more reasons than you can shake a stick at to doubt certain portions of the State's theory.

Was there some sort of conspiracy out at that scene? Is there a reason to doubt that based on what you know about Gary Tison's personality and character? I think there is reason to doubt it. Even if you believe there was a conspiracy the only evidence that we have that there was is in fact Mr. Irwin's argument that there was which is not evidence, only an interpretation of the fact that there was a robbery, but let's assume, assume you believe there was a conspiracy to rob the people. It was only a conspiracy to rob, not a conspiracy to kill. There is absolutely no evidence that any of the other people in this case had any idea what was going to happen with the possible exception of Greenawalt. There is no indication whatever that Donny Tison, Raymond Tison, and Ricky Tison knew that those people were going to be murdered.

Now Mr. Irwin talks about the inevitability that somebody would be killed given the overall picture. I don't think it's so inevitable at all. [614] Let's take a look at the overall picture when Ricky, Donny, and Raymond were in control of the overall picture.



They went in the Arizona State Prison, broke out two inmates at gunpoint, and not a shot was fired. If there was ever a likelihood of danger it was at that point. If there was ever a possibility that somebody was going to get shot that was the greatest possibility. It didn't happen.

The killings didn't start until Gary Tison was actually out and until Mr. Gary Tison had some control over these boys. Once Gary Tison started to run the show people started getting murdered.

It's disgusting and I am appalled by it and I am sure you are too, but please don't make Ricky pay for what his father has done. Don't convict him based on what somebody else did. If there was some evidence that Ricky somehow helped those people get murdered or that Ricky knew those people were going to get murdered, if there was some evidence to that effect you might be able to find him guilty, but there is none at all and I think that you all know the truth of what happened out there. You have heard it from the witness stand for four days last week, so I'm asking you to find Ricky not guilty of those four counts of murder.

And the remaining counts in the indictment you will have to use your own judgment based on the evidence that you heard. If you are convinced beyond a reasonable doubt that Ricky is guilty of those crimes, [615] then find him guilty, but the evidence is simply insufficient to find him guilty of the four murders which lets me answer a question for you in advance, a question that will probably come up.

The question may come up, "If we find Ricky guilty of robbery or guilty of kidnapping are we thereby forced to find him guilty of murder under these instructions?" My answer to that is absolutely not and it is based on two instructions. I won't give you the numbers of them. I don't think that would be fair. Mr. Irwin hasn't given you the number of the instructions he has talked about.

The first one is a long one that defines murder and the second one is the one I talked about concerning a close connection in time, place, and causal relation. If you find through some sort of aiding and abetting theory or something, that Ricky is guilty of armed robbery, before you can find him guilty of murder you have to take the next step, you have to find beyond a reasonable doubt that Ricky's actions in the course of that robbery were the cause, the legal cause of the murders and to find that you are also going to have to find that Gary Tison and Randy Greenawalt in going out to that desert and killing the people was not the reason those people are dead. The reason these people are dead is because of what Greenawalt and Gary Tison did.

Mr. Irwin has made a big deal about what happened at the roadblock. I still don't think [616] it's relevant, but look at the evidence. What did happen? The evidence indicates two things: Donald Tison did the driving and Gary Tison did the shooting. It doesn't indicate anymore than that. If that makes Ricky Tison guilty of four murders in Quartzsite I don't know how it does.

I promised you in my opening statement that the evidence would show that Ricky did not anticipate or condone these murders. Mr. Irwin says the evidence did not show that, but I suggest to you that the evidence does show you that Ricky did not anticipate or condone those murders. All I can do is argue the facts over and over and over again. You have heard it as plain as I have and there is no evidence that he anticipated or condoned those murders.

Yeah, he says, the killings were—the killings were part of the plan. I think I have discussed this earlier. If the killings were part of the plan why wasn't anybody killed at the prison? That is ludicrous.

I want to repeat the cautionary instruction the judge gave at the start of the case. You must not be influenced by sympathy or prejudice. I would like it if you would be sympathetic to Ricky, but you are not supposed to be



and so I am going to ask you to be influenced only by the facts and by the law and under the facts, under the law he is not guilty of murder. And the only way that a jury can find him guilty of murder is on the [617] basis of prejudice against him because his name is Ricky Tison.

I hope you all listened to Bud Howell this morning. He explained to you about Ricky's grin. It's nothing more than a nervous mannerism, so if any of you have formed any prejudices against Ricky because of that grin please try to wipe them from your mind because he is not laughing at the proceedings. He is showing how scared he really is, how much pressure he really feels.

And remember this case is a big news story right now and you have all felt the pressure, but five yeras, ten years from now it is not going to be a news story. Nobody is going to remember this case except the people that are involved in it and that includes you, so while you might be inclined to run out and hit Ricky with a guilty verdict in response to all that pressure, stop and think and remember this case will not be a story in a couple of years, maybe even in a couple of months it won't be a story anymore, but it will be a story to you and whatever decision you make you are going to carry with you for the rest of your life.

So make sure you do the right thing. Make sure it's based on the law and the evidence. I think that the law that the judge is going to give you and the evidence the witnesses have given you clearly indicate that in a technical, legal version he is not guilty of murder and in a common sense version he is not guilty of murder and in a moral version he is not guilty of [618] murder.

I don't know what Mr. Irwin is going to get up and say to you now and I won't have a chance to repond to it, so I can't add anything to what I have already said and I am going to sit down and I am going to thank you for your attention and urge you, beg you to strongly consider the facts and the law in this case before you leap to a decision. Thank you.

THE COURT: Ladies and gentlemen, we are going to take a recess at this time of approximately 15 minutes. While we are in recess please remember the admonition I have given you previously.

The spectators and audience, please let the jury depart the courtroom before you do if it is your desire to leave. Please utilize the jury room during this recess. I would like to see counsel in chambers briefly.

(Whereupon, a recess was taken.)

THE COURT: Let the record show the presence of the jury and counsel and the defendant. Mr. Irwin.

MR. IRWIN: Ladies and gentlemen, let me respond to some of the things that Mr. Beers touched on. I don't intend to answer each and every argument that he made. I think some of them are obviously so incorrect that you, yourselves will see through them. Just an example of what I'm talking about, he argued that nobody fired any shots at the prison and if it was [619] anticipated that killings would be done, well, certainly it would have been done at the prison, but the situation you had at the prison was such that there were a number of people, there were guards just outside in the towers, other prison personnel all around in the area outside of that building if a shot had been fired in the building that whole escape would have been over at that point. People would have been alerted and perhaps this whole tragedy could have been avoided, but when he argues that there were no shots at the prison that shows that nobody intended killings, that is simply not correct. The reason there were no shots at the prison was that they probably wouldn't have succeeded in their escape had there been shots at the prison.

Now it's possible they could have used that gun with the silencer and that probably is the reason that the silencer was put on that gun in the first place and taken into the prison so if somebody had to be killed that would be the weapon that had to be used and that silencer and

that gun going in the prison shows that killing was anticipated from the very outset of this case. Killing was anticipated and killing did in fact occur.

You don't put a sawed off shotgun in the hands of a Randy Greenawalt or a Gary Tison and give them ammunition and turn them loose and expect that something is not going to happen should it become necessary to kill. And that is what the defendant in this case did. Killing was anticipated from the very beginning [620] and that is exactly what happened.

Another point that was mentioned had to do with Wade Williams reacting the same with the defendant. That's not the evidence in the case. The evidence is that Wade Williams immediately called the dispatcher and advised the dispatcher that an ambulance was needed at the scene. He did take reasonable steps under the circumstances. The defendant did not and the defendant in his actions after the killings in Quartzsite did not indicate that he had some bad feelings about what had happened because he didn't report them. He stayed with this group and he continued to stay with them.

If he had such strong feelings about what had occurred why didn't he leave them? He had plenty of opportunities to do that. He had plenty of opportunity to report this group of people.

Another one of these types of arguments is that the statement that is attributed to Donny Tison about being forced to do things that he didn't want to do, well, we know that when he came to that roadblock south of Casa Grande that somebody shot and somebody sped up in that van and we know that the driver of that van was Donny Tison and he was acting in concert with the person who was firing the shots. It was a coordinated effort. They were working together and we know that he drove that van at some 95 miles an hour in the chase, so whether or not that statement was ever made, I don't know, but clearly Donny Tison was acting as the other people in this case and [621] defendant has acted in

this case knowing full well what was going on and aiding and assisting in all of these efforts throughout the case.

Mr. Beers has argued that the defendant should be excused for actions in this case because he is a follower and not a leader and his father is a leader and may have influenced his actions in getting involved in this case. And in this world that we live in there are many leaders and there are many followers, but if everytime a person committed an offense we would have a heck of a situation if they would come to court then and say, "Because I am a follower and not a leader you should excuse me for what I have done." That's simply not what the law is.

The law presumes a person to be a master of his own actions. It is presumed that he intends to do what he does and the law holds him responsible for what he does.

I argued to you earlier that what the defendant in this case did was not consistent with wanting the victims to live. In this instance he at gunpoint stopped the family. He pointed the guns at the people as everyone else did. His statement was, "We drew our guns on them."

He participated in the kidnap and the robbery and he did nothing to stop them when it was apparent that the persons were going to be murdered. He did nothing to help in the recovery of the bodies or in [622] the saving of Teresa Tyson. We know she lived for some period of time after that. That perhaps is unreasonable to expect that the defendant would know that, but if he was so upset about what happened when he went into that Wenden store it would have been very easy for him to stop the whole thing right at that point, but he didn't do that.

And a side, the side effects of that might have been to save Teresa Tyson. We don't know, but if he had been so upset about what happened it would have been very easy for him to report it at that point in time.

The defense, the arguments made by Mr. Beers are based on almost entirely the statements of the defendant



in this case. And these statements are statements which you should look at in a very critical manner for several reasons. First of all, when the defendant made those statements he certainly had a motive to slant them in his own favor.

Secondly, when he made those statements from the way he made them, first of all to one officer saying certain things and then changing his story again later it is apparent from the very way those statements were made that he was tailoring his statements to help himself and to minimize his own participation in this thing, saying only enough to be consistent with the facts, but at the same time minimizing his own involvement.

And finally those statements should be viewed with criticism because they simply do not [623] fit the evidence that is presented to you. The hard facts, the circumstantial evidence which shows completely the opposite picture of the defendant in this case. The defendant when he was arrested knew he was in serious trouble. He knew about the killings and he was questioned first of all by Detective Harville. And when he was questioned about a white Lincoln he knew nothing about a white Lincoln although after awhile he changed his mind. Maybe they had had a white car in the past with New Mexico license plates, but that was all he knew about a white Lincoln.

When questioned by Detective Harville about the missing Teresa he said, "What girl? I don't know what girl you are talking about." And the questioning stopped and Officer Salyer questioned him again. And again he said, "I know nothing about the missing girl."

And Officer Salyer mentioned to him, "Well, they found some footprints around the car and all of a sudden it became apparent that he may be connected, so he started talking finally at this point in time when it would serve his best interest to start talking, when it appeared as if he may be implicated anyway. He chose at that time and for the first time to tell what happened. And

his version fits with the evidence that is known about the case except for that portion that deals with his own personal feelings, his own thoughts, own intentions because generally speaking you cannot climb inside a person's head [624] and really know what they are thinking except by two methods:

Number one, you can ask them what they think about something and they will perhaps tell you the truth or perhaps tell you something else. Or secondly, you can look at the facts in the case and see what those facts are consistent with.

In this case the facts are not consistent with what the defendant said about his feelings. I have pointed this out to you previously.

It is obvious that killing was anticipated from the very beginning from the weapons that they gathered and had at their disposal throughout this thing. And it is obvious from the facts that the defendant had no bad feelings about what happened because of what he did after that, staying with this group for such a long period of time and continuing to assist them throughout this period of time. Their defense which is based on the self serving statements should be rejected by you.

Mr. Beers made two other arguments which I think need to be clarified. The first of these had to do with this conspiracy and the ending of the conspiracy at the time the people left the prison. Yet don't be confused by this concept of conspiracy or Mr. Beers talking about it. It's obvious there was an agreement to break some people out of prison and that that objective was achieved perhaps at a certain point in time, [625] but the conspiracy we are talking about in this case which was supported by the evidence was a conspiracy to escape which includes more than leaving the walls of the prison.

It means getting far away and in a safe place. And we are not only talking about a conspiracy to escape, we are also talking about a conspiracy to avoid lawful arrest. We are talking about a conspiracy to commit



robbery and we are talking about the conspiracy to commit kidnap.

Now as I mentioned to you before conspiracy is proved by acts and statements of conspirators and there was not only one conspiracy in this case, although we have direct evidence of a plan of that escape part of the conspiracy and no such direct evidence as to the conspiracy to commit robbery or the conspiracy to escape or the conspiracy to avoid and prevent lawful arrest.

You do in fact have many, many facts and circumstances which prove beyond a reasonable doubt that there was a conspiracy to avoid lawful arrest and that didn't end at the time the people left the walls of the prison. The acts of the people in this case working together from the time they left the prison to the time they were captured showed there was an agreement among them to avoid lawful arrest and there was an agreement among them to prevent lawful arrest.

As to the robbery, that conspiracy was formed when they had the second flat tire. And keep in mind that a conspiracy is nothing more than [626] an agreement between two or three or more persons to commit a crime. They had a flat tire. Their escape car was disabled and they acted together. They all drew their guns and they waved this car down, evidence which shows conspiracy to commit robbery and kidnap even though there is no evidence of a formal plan and that is not required in a conspiracy, so when Mr. Beers argues the conspiracy stopped long before anything happened that is not true.

We are not talking about one single conspiracy. We are talking about several conspiracies, conspiracies to commit crimes. We are talking about all these things, not just the plan to break out of prison. There were more involved.

The one point that is probably most important has to do with this theory of felony murder rule that Mr. Beers argued to you and mentioned quite a few times. And what he argued to you is that the defendant did not cause the killings. And he told you that before you could

find the defendant guilty in this case you must find that the defendant caused the killings and that—that in this case the killings were caused by Randy Greenawalt and Gary Tison, but that isn't the law.

There is no requirement that the defendant caused the killings. As you recall we went through the felony murder rule and I mentioned to you that the last portion is that the killing is connected to the offense and I mentioned to you that the killing is connected to the offense as a continuous transaction and [627] close relation in time, place, and causation, but there is quite a difference from what the law is and what Mr. Beers has argued to you.

Let me read this to you. "The accused cannot be convicted of murder under these circumstances," and we are talking about the felony murder rule, "unless the deaths and the perpetration of or attempt to perpetrate the alleged armed robbery, kidnapping, avoidance of lawful arrest, or escape from legal custody were part of one continuous transaction and were closely connected in point of time, place, and causation." The causation that we are talking about, the causation that is in this instruction is not between the act of the defendant and the killings, the causation that is required is between the offenses and the killing and there is quite a bit of difference, quite a bit of difference. That is an incorrect statement of the law.

The correct statement is that these underlying offenses, the robbery, the kidnap, the avoiding or preventing lawful arrest, or the escape are related to the killings in terms of time, place, and causation. So when this argument is made to you it is an incorrect argument under the law and there was in fact a connection between the killings and these underlying offenses.

Now let's look at what the law is about a defendant's connection with the killings. That was covered in these two sections that I read to you before [628] and these are the theories of aiding and abetting and conspiracy.

As far as legal responsibility of the acts of another all persons concerned in the commission of an offense, and we are talking about an underlying offense of robbery, escape, kidnap, avoiding or preventing lawful arrest, whether they directly commit the act constituting the offense or aid and abet in its commission, though not present, are responsible for the commission of the offense.

Conspiracy, a person who conspires with others to escape from legal custody, to avoid or prevent lawful arrest, to perpetrate or attempt to perpetrate robbery or kidnap is responsible for the acts later committed by co-conspirators as a part of and during the conspiracy.

These killings were a part of and in furtherance of the conspiracy to avoid lawful arrest. And under this law the defendant, a person who conspires with others, is responsible for the acts committed.

As I indicated to you previously you may have some disagreement with this law, but it is your responsibility to follow the law.

Ladies and gentlemen, I have nothing further to add at this time. Mr. Beers mentioned that this case will be forgotten, but that is not really the point of trials and the legal system. The criminal justice system, the point ultimately is the protection of the citizens of this state from further violence. And if you find that the defendant is guilty and that the State has [629] proved the case you must return a verdict of guilty.

The many officers who have testified before you and the other parts of the criminal justice system, if you will, end up at the point that we are at now and without this system we have no protection from the types of lawless acts which have occurred throughout the course of the case that has been presented to you. That protection is only as strong as the weakest link in the chain. The officers, the courts, the prosecutors, the defense counsel, at this point in time have all performed their functions. It is now your responsibility to perform under the oath that you have taken under the law that the judge has

given to you and under the facts that have been presented to you in this case.

Ladies and gentlemen of the jury, the State has proved the defendant guilty beyond a reasonable doubt and it is your duty to return a verdict of guilty on all of the charges.

THE COURT: Ladies and gentlemen, earlier in this trial I gave you some of the rules which you must follow in considering this case. I will now repeat some of those rules and I will give you additional rules which you must follow.

I will instruct you on the law. It is your duty to follow the law. It is also your duty to determine the facts. You must determine the facts only from the evidence produced in court. You should not guess about any fact.

[630] You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion you may feel I have about the facts. You are the sole judges of the facts.

You must take into account all of my instructions on the law. You are not to pick out one instruction or part of one and disregard the others; however, after you have determined the facts you may find that some instructions do not apply. You must then consider the instructions that do apply together with the facts as you have determined them. Decide the case by applying the law in these instructions to the facts.

You must find the facts from the evidence. The evidence which you are to consider consists of testimony of witnesses and exhibits admitted in evidence.

At times I have decided whether testimony and exhibits should be admitted. When an objection to a lawyer's question was sustained you are to disregard the question and you are not to guess what the answer to the question might have been. When testimony was ordered stricken from the court record you are not to consider that testimony as evidence.



Do not concern yourselves with the reasons for these decisions. Admission of evidence in court is governed by rules of law.

You must decide the accuracy of each witness' testimony. Take into account such things as [631] his ability and opportunity to observe, his memory, his manner while testifying, any motive or prejudices he might have and inconsistent statements he might have made. Consider his testimony in light of all the evidence in the case.

Lawyers are permitted to stipulate that certain facts exist. This means that both sides agree those facts do exist.

If a witness has been convicted of a felony that conviction does not necessarily mean that you cannot believe his testimony. A witness' conviction of a felony is one of the circumstances you should consider in determining whether to believe that witness.

Rules of evidence ordinarily do not permit the opinion of a witness to be received as evidence. An exception to this rule exists in the case of expert witnesses. A person who by education, study, and experience has become an expert in any art, science, or profession may give his opinion as to any such matter. You should consider such expert opinion and weigh the reasons, if any given for it; however, you are not bound by such an opinion. Give it the weight to which you deem it entitled.

The State has charged the defendant with the crimes of murder in the first degree, armed robbery, kidnapping, and theft of a motor vehicle with the intent to deprive the owner of its possession permanently. The charges are not evidence against the [632] defendant. You must not think the defendant is guilty just because he has been charged with a crime. The defendant has pled not guilty. The defendant's plea of not guilty means that the state must prove every part of the charges beyond a reasonable doubt.

The law does not require a defendant to prove his innocence. He is presumed by law to be innocent. This means the State must prove all of its case against the

defendant. The State must prove the defendant guilty beyond a reasonable doubt.

The term reasonable doubt means doubt based upon reason. This does not mean an imaginary or possible doubt. It is a doubt which may arise in your mind after a careful and impartial consideration of all the evidence or the lack of evidence.

The State must prove all of its case against the defendant with evidence that the State itself gathers. Therefore, the defendant is not required to testify. The decision on whether to testify is left to the defendant acting with the advice of his attorney. You must not conclude that the defendant is likely to be guilty because he does not testify. You must not discuss this fact or let it affect your deliberations in any way.

In deciding whether the defendant is guilty or not guilty do not consider the possible punishment.

The defendant has introduced evidence of his good character. Consider the evidence of [633] good character together with all the other evidence. If you are convinced beyond a reasonable doubt that the defendant is guilty of the crime charged you must not use evidence of good character as an excuse to acquit the defendant.

Running away or hiding after a crime has been committed does not in itself prove guilt. You may consider any evidence of the defendant running away or hiding together with all the other evidence.

If you determine that the defendant possessed property recently stolen from the individual that is one circumstance you may consider in reaching your verdict; however, this circumstance alone is not enough to permit you to find the defendant guilty.

All persons concerned in the commission of an offense whether they directly commit the act constituting the offense or aid and abet in its commission though not present are responsible for the commission of the offense.

Circumstantial evidence is the proof of fact or circumstances which give rise to a reasonable inference of



other facts which tend to show the guilt or innocence of a defendant. Circumstantial evidence should be considered by you together with all the other evidence in the case in arriving at a verdict.

A conspiracy is an agreement between two or more persons to commit a public offense or crime. One may become a member of a conspiracy without [634] full knowledge of all the details of the conspiracy. On the other hand a person who has knowledge of a conspiracy, but happens to act in a way that furthers the object or some of the conspiracy does not thereby become a conspirator. Before you may find that the defendant or any other person has become a member of a conspiracy the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed and that the defendant or other person who has claimed to have been a member wilfully participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy.

To act or participate wilfully means to act or participate voluntarily and intentionally and with specific intent to do something the law forbids or with specific intent to fail to do something the law requires to be done; that is to say, to act or participate with the bad purpose either to disobey or to disregard the law. So if a defendant or any other person with the understanding of the unlawful character of the plan knowingly encourages, advises, or assists for the purpose of furthering the undertaking or scheme he thereby becomes a wilful participant conspirator. One who wilfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed you should consider the actions and [635] declarations of all the alleged participants. It is not necessary in proving a conspiracy to show a meeting of the alleged conspirators or the making of an express or formal agreement. The

formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other facts may be proved by either direct testimony of the fact or by circumstantial evidence or by both direct and circumstantial evidence.

The acts and statements of a conspirator when said or done in furtherance of the conspiracy and during its continuance are binding on all participants in the conspiracy; however, the acts and statements of the conspirator are not binding on other participants in the conspiracy if they occur after the object of the conspiracy has been consummated.

A person who conspires with others to escape from legal custody, to avoid or prevent lawful arrest, to perpetrate or to attempt to perpetrate robbery or kidnap is responsible for the acts later committed by co-conspirators as a part of and during the conspiracy.

Theft of a motor vehicle is committed by taking from another a motor vehicle with the intent to deprive the owner of possession. Such intent may be to permanently deprive the owner of possession or to temporarily deprive the owner of possession. If you determine that the defendant took the motor vehicle from [636] another you must then determine whether he meant to temporarily or permanently deprive the person of possession. If you find that the defendant intended only to deprive the person of its possession temporarily you must find the defendant not guilty of theft of a motor vehicle with the intent to deprive the owner of its possession permanently.

Armed robbery is the taking of personal property in the possession of another from his person or immediate presence and against his will accomplished by means of force or fear and with a gun or deadly weapon.

A person who seizes, confines, inveigles, entices, decoys, abducts, conceals, or carries away an individual by any means whatsoever with intent to hold or detain or

who holds or detains any individual for ransom, reward, pecuniary benefits, or otherwise or as a shield or hostage or to commit extortion or robbery or a person who aids or abets any such conduct is guilty of kidnapping.

Murder is the unlawful killing of a human being. The thing that distinguishes murder from all other killings is malice. There are two kinds of malice. A person has one kind of malice when he deliberately intends to kill. If you determine that the defendant used a deadly weapon in the killing you may find malice. If you determine that the defendant had no considerable provocation for killing you may find malice.

Murder which is committed in [637] avoiding or preventing lawful arrest or affecting an escape from legal custody or in the perpetration or an attempt to perpetrate robbery or kidnapping is murder of the first degree.

A murder committed in avoiding lawful arrest or effecting an illegal escape from legal custody or in perpetration of or an attempt to perpetrate robbery or kidnapping is murder of the first degree whether wilful and premeditated or accidental.

An accused cannot be convicted of murder under these circumstances unless the deaths and the perpetration of or attempt to perpetrate an alleged armed robbery, kidnapping, avoidance of lawful arrest, or escape from legal custody are parts of one continuous transaction and were closely connected in point of time, place, and causal relation.

There is no requirement that the killing occurred during the robbery, kidnap, escape, or avoiding lawful arrest, or that the killing be part of those crimes other than that the act be part of a continuous transaction.

All twelve of you must agree on a verdict. All twelve of you must agree whether the verdict is guilty or not guilty. When you go to the jury room you will choose a foreman who will be in charge during your deliberations and who will sign any verdict.

You will be given 20 forms of verdict on which to indicate your decision. I am going [638] to read these to you now omitting the formal caption on each and reading simply the body of each. And I am going to read them to you simply in the order they were given to me, not in any order of significance.

The first form of verdict reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of armed robbery of Donnelda Donna Lyons.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of armed robbery of Donnelda Donna Lyons.

The third form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of armed robbery of John F. Lyons.

The fourth reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of armed robbery of John F. Lyons.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of theft of a motor vehicle with the intent to permanently deprive the owner of its possession.

The next reads we, the jury, [639] duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of theft of a motor vehicle with the intent to permanently deprive the owner of its possession.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of kidnapping of John F. Lyons.



The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of kidnapping of John F. Lyons.

The next one reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of kidnapping of Teresa Jo Marie Tyson.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of kidnapping of Teresa Jo Marie Tyson.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of kidnapping of Donnelda Donna Lyons.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon [640] our oaths do find: The defendant not guilty of the commission of the crime of kidnapping of Donnelda Donna Lyons.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of murder in the first degree of Teresa Jo Marie Tyson.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of murder in the first degree of Teresa Jo Marie Tyson.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of murder in the first degree of Christopher Lyons.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of

the crime of murder in the first degree of Christopher Lyons.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of murder in the first degree of Donnelda Donna Lyons.

[641] The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of murder in the first degree of Donnelda Donna Lyons.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of murder in the first degree of John F. Lyons.

The final form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of murder in the first degree of John F. Lyons.

Anything else, gentlemen?

MR. IRWIN: No, Your Honor.

MR. BEERS: No, Your Honor.

THE COURT: The bailiff will come forward and be sworn.

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## RECORD TRANSCRIPT—MARCH 6, 1979

(Trial of Raymond Curtis Tison)

[385] TRIAL

THE COURT: Let the record show the presence of the jury, counsel, and the defendant. Are you ready to proceed, Mr. Irwin?

MR. IRWIN: Yes, Your Honor.

THE COURT: Mr. Bagnall?

MR. BAGNALL: Yes, Your Honor, we are.

THE COURT: Very well. Ladies and gentlemen, we are at that stage of the case where counsel are permitted to argue their respective positions to you. Before they do so let me remind you that arguments and comments of counsel are intended to help you in understanding the evidence and applying the law. While arguments are not evidence counsel may argue reasonable inferences from the evidence. If any comment of counsel has no basis in the evidence you are to disregard that comment. Mr. Irwin.

MR. IRWIN: Thank you, Your Honor. Ladies and gentlemen of the jury, first of all I would like to thank you for your kind attention throughout the days we have been presenting evidence to you. I know it has taken some time out of your personal lives and your own jobs. I think all of you realize it is a function that is very important, perhaps one of the last since they did away with the draft, one of the last sort of compulsory [386] things that citizens of this country are required to do. We appreciate your attendance and attention you have given this matter and ask that you continue ask you deliberate on this case to give the case your fair and unbiased attention.

When you were sworn you took an oath which included in part an oath to follow the law. It's particularly important in this case that you abide by that oath during your deliberations because in this case we have

several areas of law which some of you may disagree with. The law that is going to be explained to you by the judge and will apply in this case has to do with the situation where the law may hold somebody responsible for the acts of other persons. You may disagree with this, but it is your duty to follow that law.

That same law that will be explained to you also requires, or requires under certain circumstances that a killing, whether or not it's intentional or accidental, be considered first degree murder if that killing occurs during the commission of certain offenses. This is something that is known as the felony murder rule. And again it's a little bit foreign, perhaps, to some of you because you normally think of first degree murder as a situation where you have a premeditation.

Under the felony murder rule premeditation is not a requirement. Again you are going to be required by the oath you have taken to follow the law as given to you by the Judge.

[387] One other portion that you are going to be required to do is to set aside any biases, prejudices, or sympathy that you might have in this case and as you all have noticed in this case the defendant is a young man. And you may have some sympathy for him, yet you are required to set that aside during your deliberations in this case.

As the Judge mentioned to you the things I tell you are not to be considered by yourselves as evidence. If I should perhaps misstate some of the evidence please disregard that. Rely on the evidence that you yourselves have heard, the testimony, exhibits, and stipulations in this case. By the same token if I should leave out something which you feel is important in your consideration don't fail to consider that evidence also.

The State in a criminal prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. I think all of you know that. Those of you who have been involved in criminal cases before and also just

from a general knowledge of how criminal cases proceed. That is a burden that is placed on the State and it's a burden which we accept and in this case I will show you in a few minutes that the State has proved the case against the defendant beyond a reasonable doubt.

The instruction that you will be given on that includes the statement that that does not mean beyond any possible or beyond an imaginary doubt, so in other words the State does not have to prove the case [388] to a one hundred percent certainty, but it does have to prove it beyond a reasonable doubt.

The evidence that you will receive or that you are to consider in this case has come to you in various forms. I would like to take just a minute or two and go over some specific items that have been introduced in evidence, some of the exhibits and their relation to the case because I think as some of you may have noticed there have been some exhibits that have not yet been explained to you. I would like to take just a minute or two to explain some of those.

The majority of these are what we call certified documents that have been admitted in evidence. And a number of them deal with motor vehicle registrations. I think there are a couple of photos that you may or may not have seen that weren't put up on the board.

This photo is of this blue four wheel drive pickup which was discussed by a number of the witnesses in the case, Mrs. Ermentraut who purchased this truck, Mr. Todeshi who had this truck turned into the Chevrolet Company up in Colorado, and the other officers who have said that they have examined the serial number on this or this is the truck that was down in the lot there in Phoenix at the present time.

This particular document which is number 81 is simply the certified registration of the ownership on this particular vehicle which indicates [389] that this vehicle with its license and serial number was purchased by

Kathleen Ermentraut and it gives the date and so forth, simply indicating who the owner of this pickup was.

Another such item is another certified copy of the registration and the photograph of the car that it belongs to. This is a green Ford car that was picked up there at the general hospital in Pinal County, the one that Sergeant Lois Utt found there at the hospital. And it indicates in this certified registration that the vehicle, the one that was found there at the general hospital, is owned by Donny Tison. This vehicle as you will recall is similar to the one that was described by Officer Gustafson, the tower guard, there at the prison, as the vehicle that Gary Tison and four other persons left the prison in on that morning of the escape on July 30.

Another photo which I think has been pointed out to you or you have seen it is number nine, this being the interior of the Lincoln as it was found by Officer Young on the date that he was there at the murder scene. I think what I would like to point out in this picture, if you will notice at the corner here is a black bag which is similar to the one that Mr. Volpicelli described as being taken out by the victims in this case the night they were leaving Yuma.

In this instance we have another certified registration paper. This is exhibit number 45. This one perhaps a little more important than [390] the other ones that I have pointed out to you. This document relates to the Mazda which was owned by John Lyons. This document indicates that John Lyons and Donnelda Lyons were the owners of this orange Mazda, the Mazda that is shown in the photograph, the Mazda which appears to have been painted a different color, and the Mazda in which the defendant and other persons were seen in the Flagstaff area, and the Mazda which was found buried in the forest near Flagstaff.

There were a couple of fingerprint lifts that were discussed and I think the officer, Mr. Watling, told you where these were lifted from and later indicated that



certain numbers bore certain prints. Just to tie those up a little bit, if you will, number 89 was the print which was determined to have come from the door release button on the driver's side or the left front door and this particular print, number 89, was identified as the left thumb of the defendant in this case. Number 78D, in this instance a print which was lifted and as you will see there is a little diagram on here where this came from on the driver's side of the vehicle on the fender. And again in this instance we have from the officer's testimony or Mr. Watling's testimony the prints of the defendant in this case on the Lincoln.

The other one that I wanted to point out was number 76D. Again in this instance a print of the defendant in this case, but in this case coming from the steering wheel of the Mazda.

[391] Finally one additional, if you will, certified document. And this being a document from the federal government firearms transaction record. I think all of you know if you buy a gun you have to sign for it. These forms are filled out and recorded and kept on record. And in this instance we are talking about a record which indicates that this gun, the gun that was worn by the defendant in this case at the time of his arrest, was owned by victim, John Lyons.

As I mentioned to you a few minutes ago in this case we are involved in some legal principles which you will be required to follow that have to do with several concepts that may be somewhat unfamiliar to you. These are tied up in, first of all, the law of conspiracy and secondly, this so called felony murder rule. I would like to take just a few minutes at this time and explain these to you because they are very important in this particular case.

Conspiracy essentially is nothing more—it's a crime, but it's a crime which is defined as an agreement between two or more persons to commit a crime. The essence of conspiracy then is the agreement to do some-

thing unlawful and generally requires some step in furtherance of that particular conspiracy.

The conspiracy, an agreement that is sort of the basis of the conspiracy, can be something that is informal in a sense. It doesn't have to be some persons who sit down and write a formal agreement, if you [392] will. It can be an agreement that is simply an understanding between them that they are going to do some unlawful acts. A conspiracy may be proved by circumstantial evidence. That is, often times it is very difficult in court to prove what a person was thinking. In other words, did two people agree on something? So it's necessary to look at what they do in order to prove what they were thinking. In other words, actions speak louder than words.

It's sort of a common sense principle. If you want to know what a person is thinking about you watch what he does. And from what he does you are able to infer that he is thinking about a particular thing.

One other fact about conspiracies and that is why it's important in this case is because in a conspiracy one person is bound by the acts of all the conspirators and once a group of people have conspired to do something, they have agreed to do something, if any one of those persons does something in furtherance of the conspiracy, then everyone who was a member of the conspiracy as long as the acts are somewhat connected to it, anyone else who is a member of that conspiracy is responsible for the acts of the other persons.

Now this is the—as you recall I told you at the beginning that the State would not be able to prove that the defendant in this case actually pulled the triggers that murdered John Lyons and his family; that it is under this principle that the State has [393] proved the defendant is responsible for these murders. A very important concept. It is a concept which has a sort of common sense notion behind it.

The law is, or the law sort of assumes that if a person helps or assists in the commission of a crime, whether



or not they do everything in that crime, they also are responsible for that. And when we are talking about conspiracies or groups of people the law also sort of takes the position that if you have a group of people who are acting together they are more dangerous than one person acting alone and the law will impose a stricter burden, simply that a person is responsible for the acts of co-conspirators even though he himself may not do those acts. If he was a part of the conspiracy, and I think probably the best example you can take right from this case, this sort of understanding of the law that a person acting alone is not quite as dangerous as a group of people acting together, let's just say, for example, that Randy Greenawalt had broken out of prison by himself and had found himself in this Lincoln with two flat tires and the Lincoln was disabled and along came the victims in this case, three adult persons versus Randy Greenawalt, would he be able to capture them, hold them captive, move them, move two vehicles out in the desert and hold them there until they could be murdered? I don't think so. It would be very difficult for this operation to have been pulled off without a group of people acting in concert and together. And that's just an example of why the law [394] is that a person who is a conspirator, becomes a conspirator, is responsible for the acts of other conspirators in the case.

Secondly, we have this aside from the concept of conspiracy, we have this other separate area called the felony murder rule. And this simply says that under certain circumstances a person is guilty of first degree murder if that murder or the killing occurs during certain other felonies. The Judge will read you an instruction on that and it is essentially as I have diagrammed it here on the board. Keep in mind that this is a summary and it leaves out a lot of words, but is intended to be a fair representation of what that instruction is.

Keep in mind also that you should listen to the instructions and, of course, follow the instructions that the

Judge gives you, but in the felony murder rule and it is quite simple it is any murder whether it's deliberate or accidental which occurs during avoiding or preventing lawful arrest or which occurs during escape or which occurs during a robbery or which occurs during a kidnap is first degree murder. It's quite simple, a killing or a murder which occurs during any one of these specific instances.

Now it is not necessary that it occur during each and everyone of these. Any one would be sufficient if there was evidence, for example, a killing which occurred during the robbery could be felony murder; for example, a killing which occurred during avoiding or [395] preventing lawful arrest would be felony murder or first degree murder. In this case we are talking about essentially each and everyone of these, but for instance if the State would be unable to prove everyone of the convictions one would be sufficient to convict under the felony murder rule.

There is one additional requirement, that is, that there is sufficient connection between the robbery and the killing or a kidnap and a killing in terms of being a continuous transaction and closely related in place, time, and causation. That then is the—this concept that we know as the felony murder rule.

In this case some of the most important instructions or one of the most important instructions sort of combines these two areas that I have just talked about. First of all, this concept of responsibility as a conspirator for the acts of other conspirators and the felony murder rule because in this case we have a situation where the defendant is a conspirator with other persons and those other persons killed somebody during these offenses, during a robbery, kidnap, avoiding or preventing lawful arrest, or escape. And the two instructions combined in this case and you will receive an instruction which sort of combines the concept that we are talking about.

This one instruction reads as follows: A person who conspires with others to escape from [396] legal custody, to avoid or prevent lawful arrest, to perpetrate to attempt to perpetrate robbery or kidnap is responsible for the acts later committed by co-conspirators as a part of and during the conspiracy.

This instruction sort of ties these two concepts together and is sort of the important instruction because that is the situation that we have in this particular case.

Let's get into some of the evidence which indicates, first of all, that there was in fact a murder under the felony murder rule. Secondly, it indicates that this—these murders occurred or were committed by a group of conspirators. And finally that the defendant in this case was a member of those conspirators and as such is responsible for those murders.

Before getting into that I would like to take up one more thing. And that has to do with this idea of circumstantial and direct evidence, because in this case we have many types of both, many examples of both types of evidence. Direct evidence is evidence that shows something directly. Circumstantial evidence is evidence which shows something from which you may infer that something else occurred. And the important part there is that you may draw an inference from it.

Let me kind of explain to you exactly what I am talking about. You remember these two weapons, these weapons Mr. Dillon talked about, the F.B.I. expert, and he told us something about these two guns. He [397] told us that one of these guns fired many of the shotgun shells which were laying around the Lincoln. And he told us that the other one, that many of the shotgun shells that were laying around the Lincoln had been loaded into and ejected from this weapon. Here we have a situation where he can say from microscopic marks from the ejector marks, let's say, that a particular shell was ejected from a weapon. He cannot say because the firing pin did not have microscopic marks that the shell

was fired in this weapon, yet when you look at the facts in the case we have an expended shell laying beside the Lincoln and we know that that shell was loaded into and extracted from that weapon a logical inference that you may draw from those facts is that the shell was fired from that weapon. And that's what we are talking about when we are talking about inferences.

Let's take one additional example of an inference in this case. In the car we have the bodies of Christopher and Donnelda Lyons killed by a shotgun. Outside the car we have the body of John Lyons killed by a shotgun. And some distance from this area we have the body of Teresa Tyson killed by a shotgun. Laying around the car we have numerous shotgun shells and later we find these same weapons which—from which the shells had been ejected. And in one instance from which these shells had been fired. What inference is logical and can be drawn from this set of circumstances?

The inference is that these two weapons were used to murder John Lyons and his family. [398] Again a logical inference, but nevertheless you are required to make an inference from the evidence which is there. And that's all we are talking about when we are talking about an inference, something that you may logically say based on the other evidence that you have in the case.

This case is based on evidence which is both direct and which is circumstantial. All of the evidence that has been presented to you bears on these sort of central issues which I explained to you a minute ago and prove beyond a reasonable doubt that these killings were part of a felony murder killing, that these killings were the result of the actions of a specific group of conspirators, a gang of conspirators, if you will, and that the defendant in this case was a member of that conspiracy and as such is responsible for those killings.

Let's look first at the evidence which indicates that these killings were felony murder killings. As you will recall a minute ago we discussed that a killing under



anyone of these instances was a felony murder killing. Let's take a look at each one of those.

Robbery: Were these killings as part of a robbery or occurred during a robbery or connected to a robbery? A robbery, as the judge will explain to you, is a crime which is the taking of the property of another person by the use of force or fear. It's like a theft in a way, although it has the added element that you take somebody else's property by the use of force or fear.

[399] What evidence do we have in this case that suggests that there was a robbery in this particular instance? Well, first of all we know that—that the victim in the case has a Mazda car. And we know secondly that this group of people ended up with that Mazda car. We know that he had certain other property in his possession, two guns, the .45 which was found under Gary Tison and the .38 which was taken from the defendant himself some period of time later. And we know that the victim in this case and Donnelda Lyons and the family left Yuma in their car. And we know that the escape vehicle, this Lincoln, was disabled and had two flat tires, so the persons who were using that vehicle certainly had a motive to want to take another type of car.

We know that John Lyons was travelling on Highway 95 and that his body was located in that same area. And when he was travelling on Highway 95 he was probably travelling in the Mazda which he owned.

Was property taken? Yes, property was taken. The guns and the car.

Was force or fear used? Certainly force was used in this instance. I think that is the one fact that stands out above all, so we have a robbery occurring here.

The killings were related to this robbery, the taking of the property by the use of force. Let's look at the next one on there. Let's take kidnap.

[400] The kidnap, as the Judge will tell you, is simply the confining of a person. And there is a lot of words used in there, but essentially it amounts to the holding of somebody for the purpose of robbery or the moving of

somebody by the means of force. And we know that John Lyons and his family left Yuma in their Mazda, somehow they ended up in a different car some distance off the highway out in the desert.

In this instance you are required to make some inferences from the evidence that you have, but I think the inference is very logical and it's clear that these victims were moved and they were moved by the use of force and fear. Additionally they were detained for the purpose of committing and robbery and those essentially are the elements of kidnap. And I think it is also clear that these killings were related to these kidnappings, occurred during the kidnaps, and again we have a killing under one of these circumstances that are required by this statute.

Did the killings occur during an escape? Well, I think that is how the whole case started out, although it started sometime before the escape with some plans that were laid, some gathering of cars and weapons and modification of those particular weapons, but the whole case started out as an escape where two inmates of the Arizona State Prison were released by the defendant in this case and we know that they got out of prison at about 9:00 or 9:15 in the morning of July 30, and that some [401] 40, 36 to 48 hours later John Lyons and his family were dead because they left Yuma at a certain time two days later. And the killings probably occurred at that time, so in this case we had a group of five people who were leaving the prison who were wanted at the time. Warrants had been issued, as you will recall, from the stipulation we had. And involved in this get-away is part of that escape.

And it's clear that the reason John Lyons was killed was because their escape vehicle had two flat tires and was disabled and another vehicle was needed. Obviously another vehicle was taken, the Mazda, disguised, but again we have a situation where the killings were part of an escape.



It could even be assumed in this instance that the very acts of murder were done in this instance to help the escape so that there would be no witnesses to turn them in to say they were in Yuma County. And to avoid being turned in immediately and help the escape, so I think again the evidence is clear that we have another one of these specific felonies, the escape portion, and that the killings were related to that escape.

The last one that is listed says that any killing which occurs in avoiding or preventing lawful arrest is murder of the first degree. In this instance again the evidence is clear that these murders occurred during avoiding or preventing lawful arrest. As you recall the only inference that you can draw as to the motive is that there were some flat tires on that [402] Lincoln and the Lincoln was disabled and here were five persons who were on the run, so to speak, had recently escaped from prison and they were interested in staying out of prison. And they needed another car to effect this getaway to avoid and prevent lawful arrest. And the murders were committed for that reason.

We have evidence that guns in this case were brought into the prison and guns were gathered to be used in avoiding or preventing lawful arrest. We have evidence that happened after the murders, indications that there were attempts to hide this Mazda, to repaint the Mazda again, to help these persons from being caught if they had to use that car for a period of time. It had to be disguised in case the murders were discovered and there were some bulletins put out on the description of that particular car.

Again evidence that the Mazda itself was buried several days later when this blue pickup truck was obtained. Again evidence that these persons were involved avoiding or preventing lawful arrest. Evidence that the blue pickup itself was turned in several days later again to a shop where hopefully it would not be discovered for

some period of time. Again evidence that these persons were inviding or preventing lawful arrest.

But as I mentioned in all of these little pieces of evidence throughout this period of time from the prison break until the time that these persons were captured have some bearing on what they were [403] doing throughout this period of time and I think that probably as much as any other part of this case what happened there at the time that these persons were captured indicates what they were doing throughout this period of time, that they were in fact avoiding or attempting to avoid and prevent lawful arrest. And that when John Lyons and his family was murdered that is exactly what they were doing.

Let's take a look at what happened that night in Pinal County at the roadblock. As you will recall from the testimony there were a number of officers who on that particular night, the late night of August 10, and early morning of August 11, were stationed at various roadblocks in Pinal County somewhere south of Casa Grande and there were a group of officers at the roadblock at Chuichu and Battaglia Roads.

And it was sometime after midnight when several of the officers saw a particular vehicle approaching them. One of these was Officer Jewell and he and his sergeant, Sergeant Valenzuela, started walking out in the road as this vehicle approached. And they noticed that it was a van.

And as the vehicle got there they heard some shots fired. And this van took off down the highway. Officer Jewell hopped into his patrol vehicle and he started following this van at a very high rate of speed, the number 95 miles an hour, throughout most of this chase and again he saw at this time some flashes coming [404] from the back of the van. He saw a window being knocked out of the van, flashes, and he heard bullets going past and he heard a couple of bullets hit his own car.

And this van continued on for a distance and other officers were involved in the chase and finally it came to a second roadblock and again shots were exchanged at the second roadblock and that van ran off the side of the road. Some persons were seen running out of it and the officers that were there were apparently concerned because there were some people they assumed who were armed in the desert and they kept a watch in the road and one of these officers, Officer Williams, went over to that vehicle and looked in the front and he found the body of Donald Tison dying at that time.

And at that time he picked up a gun from the front of the vehicle. And he picked up this weapon here, exhibit number 31. And he put it in his belt.

And he continued to watch there in the area and they began to arrest a short time later some of these people who were right there in that area. And the first person they arrested was Mr. Greenawalt. And they found under him two guns. One of them was picked up by Deputy Raastadt and another one was picked up by Officer Grebb. They picked up these two guns from underneath Mr. Greenawalt. And he also had a jacket with him that was very heavy and had quite a bit of ammunition in it.

[405] And they asked several other persons to come out of the desert. And the first one of these was Ricky Tison. And he came out and they asked the second person to come out and he came out. And he was apprehended by Sergeant Lopez. And at the time he came out of the desert he told Officer Lopez that he was wearing a gun. And Sergeant Lopez took this gun out of a shoulder holster that the defendant himself was wearing, a gun which was owned in this instance by the victim, John Lyons.

And Officer Jewell at that time went out into the desert to search to see if there were anymore weapons. And first he went to the spot where Ricky Tison was laying at and he found this gun. This gun which Mr. Whittington had described as having been sold to Ricky

Tison and this gun which was also related to this case by the two cartridges that were found there at the scene of the Lincoln.

Then he went from there to the spot where the defendant in this case had been lying on the ground and he found another gun. And where the defendant was at on the ground he picked up this weapon.

And after that Officers Harville and Solis began processing the van that is shown in the picture. And they took a number of items from that van and some of the items that they took from the van were hundreds of rounds of ammunition. I think he said several hundred rounds of various types and sizes of ammunition. And he also took from that van some weapons.

[406] And they took this .22 calibre revolver from the van. And they took this .25 calibre automatic Raven Arms, the one with the serial number missing from it out of the van. And they took this gun, a .380 automatic and this silencer which fits it from a canvas bag in the back of the van. And they took this gun from the van, again a gun that Mr. Whittington recognized as having been in Ricky's possession some months earlier.

They took this one from the van, this .16 gauge Browning automatic they took from the van. Again the weapon that was used to murder the victims in the case, a weapon which was in the possession of Ricky Tison sometime earlier, although it had at that time a longer barrel. They took this from the van.

And this .20 gauge shotgun again which apparently has been modified and again is one of the murder weapons. They took this gun from the van.

Several days later Officer Martinez who is at the scene nearby that area when the body of Gary Tison is found digs in the dirt and he finds this weapon. Again a weapon which was owned by the victim in this case, John Lyons.

Here we have probably more than any other single fact clear evidence of what these people were doing. They



throughout this period of time were attempting to avoid or prevent lawful arrest. If that isn't true why would they have had all of these weapons and all of this ammunition, go through that roadblock shooting, [407] if they weren't attempting to avoid lawful arrest?

And in this case we have a situation which again falls under that felony murder rule, the other felony that was listed on there. Of the four, the murders in Yuma County were committed in avoiding or attempting to avoid lawful arrest. That is what these people were about from the day they got out until the day they were captured.

Ladies and gentlemen, the State has proved beyond a reasonable doubt that these murders were committed under one of those felonies that are listed there, either a robbery, a kidnap, an escape, or an attempt to avoid or prevent lawful arrest. Let's look at that second question that we have to ask, and that is whether or not this felony murder was committed by this gang of conspirators.

In this instance we know that and keep in mind what the definition of conspiracy is, it's an agreement between some persons to do certain offenses. We know that this group of people had this Lincoln sometime before the breakout, that Lincoln itself ties these murders to this particular group of people.

We had an escape at the Arizona State Prison by two inmates who were there and three other persons who were helping them, including the defendant, and that part of their escape involved the use of that Lincoln. We know that because the green Ford that they left for the Lincoln was ditched just a short [408] distance away and that Lincoln was in their possession sometime before the escape and that Lincoln had all their fingerprints all over it.

It had the fingerprints of Randy Greenawalt in it and the fingerprints of Gary Tison in it and there is only one way that those fingerprints had gotten in this case and that was if that vehicle had been used in the escape because Mr. Greenawalt and Mr. Tison were inmates at

the Arizona State Prison before that day. They weren't out running around in Lincoln, so if their prints got in that Lincoln they had to get in there after the escape.

We know from those facts that the Lincoln in which the bodies and Donelda and Christopher Lyons were found was connected with this group of people and this particular felony murder is connected with this group of people for that reason.

There is a lot of other facts that connect these murders, these felony murders, up with this group of conspirators. One of them is that all of these persons participated in the break from the prison and this instance even the defendant participated in this break from prison. And when their escape car was disabled the killings occurred.

We have in this instance a connection between this group of people and these felony killings because this group of people possessed property stolen from the victim in this case. They possessed the [409] Mazda owned by the victim, we know from several different facts in the case. We know that from Mrs. Scott who saw them several hours after the killings purchasing spray paint. She didn't see the car, but we know that the car was spray painted the color they bought at the store, so we know what was going on when they went into the store to buy spray paint. It was to disguise evidence that those murders had occurred and we know that the defendant in this case had possession or that this group of people had possession of this car from the fact that they were seen in a car which was very similar to it up in the Flagstaff area.

That car was described both by Mrs. Ermentraut and Ron Mead. Although we can't say positively that the car they saw them in was the same one the description was the same, the color was the same, the area where it was buried was in that area. The logical inference from those facts, they were seen in the car when they went to the store and they went into Mrs. Ermentraut's

house, but even more positive than that we know that this group of people was in possession of that Mazda because their fingerprints were all over that Mazda. And that is the property which this group of people possessed which indicates that they were connected with the killings in this case.

They possessed several other items of evidence. First of all they possessed property owned by John Lyons, the two guns, the .45 that was found [410] under the body of Gary Tison and they possessed, the defendant himself, possessed this weapon, the Smith and Wesson chrome plated air weight that was found on the defendant. And again it was property stolen from John Lyons.

And finally this group of people when they were arrested possessed the very weapons that were used to murder John Lyons, to murder his wife and child and Teresa Tyson. All of these facts indicate clearly that this gang of conspirators, this group of people, these persons who were avoiding lawful arrest are responsible for these killings.

Let's look at that final question that we have to ask in this case which is whether or not the defendant in this case was a member of that conspiracy, the conspiracy that is responsible for these felony murders because if he is he is responsible for the acts of all of the conspirators whether he pulled the trigger or not. He is responsible for those felony killings that were done by this group of conspirators.

There is again a lot of evidence which indicates clearly that the defendant in this case was a member of that conspiracy. Perhaps, first and foremost we know he was there with them at the beginning, at the prison break, and we know that he was there with them at the end when they were shooting their way through the roadblock and then running into the desert with the various weapons, but there are a lot of other important [411] things.

We know that this was a prison break that was pretty well planned out. It had to work with a number of different people coming together and participating in different functions, but even before that certain preparations had to be made.

And we know that a couple of these guns that were used in the murders, in the prison break, these people had before that time and we know that a couple of these guns were unmodified when they had them before the prison break. And we know that the defendant in this case went to a fellow employee of his, a machinist, Mr. Taylor, and asked him to machine the barrel of a gun. And we know that those shotguns were in fact sawed off sometime probably so that they would be small enough to be smuggled in the prison without being seen immediately.

We know that the defendant in this case himself participated in that prison break. As I mentioned actually the things that happened on July 30 had to be a well planned and executed situation because the guards had good communications. They had the walkie-talkies. They had some intercom systems. They had tower guards watching and all of the normal precautions, perhaps, that prisons would take so it would take a well planned effort to break someone out of there. And that's exactly what occurred and the defendant in this case was a very important part of that breakout plan.

As you recall there at the [412] trusty annex the prisoners are housed in an area that is outside of that building from where the break occurred. There is a locked gate between where the prisoners are housed and the visitors center. And in this instance the defendant in the case went into the prison some half hour earlier, or perhaps an hour earlier and he went in there for one reason: That was to get Gary Tison into that visitor center so that he would be in a position where he could break out with the rest of the people when the guns and the other help got there.



If the defendant hadn't gone in and signed in Gary Tison would not have been able to check into that visitors center and be in a position where he could go out. That wasn't the only help that the defendant in this case offered to that group of people there at the prison. As the officers were being arrested and placed in the room and the visitors were arrested and placed in this room someone was standing guard at the front door as these various persons were moved in and that person was standing guard with a shotgun. And that person was the defendant in this case.

Again he is a member of this conspiracy, a participant in the conspiracy and connected for that reason with the murders.

There is some evidence which indicates that the defendant in this case is a member in that conspiracy and is responsible for the acts of conspirators and that has to do with the fingerprints on [413] that Lincoln. As you recall one of those prints, the thumb print, was on the door release button on the driver's side. If you look at a picture, number five here, the picture of the side of the Lincoln shows the driver's side of the Lincoln. You can see that door release button. It's right here on this door. It is not very clear on this picture. If you need to look at the detail of that door button you can look at the picture that shows the other side of the car. It is again the same type of door handle on this side as on the other side, but a little clearer look at the particular handle. You will note that the door handle is up above and the button underneath.

So if you went to open the door you would grab that handle like this and push the button like this, like on many cars. You can see the configuration of the door handle and the button and the button on that side of the car where someone would get in the car. The print they took off of that button is the print of the defendant in this case.

Now this fact indicates that he was in fact there and participated because it is his print that is on that door button on the driver's side of the car and that car had to be driven there to the desert by somebody.

We know that the defendant in this case was also a member of this conspiracy because he helped in the things that occurred after the murders. He went into the Wenden store to buy some paint and he was [414] identified by Mrs. Scott. And we know what the paint was used for. It was used to disguise the car, to hide evidence of the murders. And the defendant himself was involved in that.

We know that in Flagstaff he went into the store to buy supplies for this group of people. Again to assist them in their avoiding or preventing lawful arrest while they were camped out there in the forest near Flagstaff.

We know that his fingerprints, or palm prints, excuse me, were on the steering wheel of that Mazda where they found it half buried and covered with pine branches, again indicating that he was a member of this conspiracy and participated and is responsible for the acts of the conspirators.

And finally we know that he was a member of this because he himself at the time of his arrest was wearing this gun stolen from John Lyons.

The State has proved that there was a felony murder which occurred. The State has proved that these murders were done by a group of conspirators and the State has proved that the defendant in this case was one of those conspirators and is responsible for those acts.

Up to now we have sort of been discussing murder and the felony murder rule. There are a number of other charges in this case, kidnap, robbery, and theft of a motor vehicle. And the Judge will give you [415] instructions on those.

The evidence which is related to those which is the evidence I have just gone over with you in regard to the murder charge, of course, those are the most serious.

And in this case we have a good portion of the direct evidence coming from several eye witnesses, evidence which ties the defendant into this conspiracy.

And each of these instances the evidence which comes from these eye witnesses is corroborated which means it is accurate and you will be required to judge the accuracy of each witness' testimony, but in this case these eye witnesses because their testimony is corroborated were accurate.

The first instance I am talking about was there at the prison, what the defendant did at the prison. And in this case we had two persons who saw essentially the same thing, Officers Ed Barry and Wayne Wrisk from the prison, both indicating the defendant's participation in the escape.

From Flagstaff we had Mr. Ron Mead who identified the defendant as coming into the store. And we know that his identification is accurate because he recalls that what these people were doing buying groceries and he recalls selling them groceries and in fact that the Mazda later on when they found it they found a cash register's receipt which came right from Ron Mead's store and it came on the exact date that he saw them there, so we know that Ron Mead's observations were accurate and [416] his testimony was accurate.

And finally we have the testimony of Mrs. Stott indicating that the defendant was involved in this. And again from the evidence we know that her descriptions of what happened were accurate.

As you recall, Mrs. Stott indicated that these people came in at about 10:30 to 11:30 in the morning on the same date of the murders, August 1st, in a town which is some 60 miles or 70 miles perhaps from the scene of the murders, Palm Canyon being 20 miles south of Quartzsite and to Wenden from Quartzsite being 43, I think it was 43 or 47 miles to the east, giving us sufficiently 70 miles distance from the scene of the murder

where Mrs. Stott saw these people at 10:30 to 11:00 that morning.

Mrs. Stott indicated that when these persons and one of them was the defendant in this case, they asked for 12 cans of spray paint, but that she only had six cans of spray paint and only six cans were sold. And if you take a look at this picture of the Mazda you will see that it has been repainted gray. And we know that the car has been repainted, so what she says is accurate, even more if you look closely at this picture you will see it's two tone gray. The bottom half appears to be a primer gray and the top half is a silver gray. Again it's obvious they were unable to buy half the paint they needed from this car itself and Mrs. Stott's testimony is accurate because it is borne out by this [417] picture in this instance.

The defense in this case called several character witnesses and these were persons who were—have known in this case the defendant for many years, one of them for the last ten years, and the other one since the defendant was seven years old. And he may have been during these years that he was growing up a very good person, non-violent and honest, but there comes a time in every young man's life when he has to decide which way to go. When he becomes that age the law holds him responsible for what he does. And the defendant in this case has chosen to go a way in which the law requires you to find him responsible for those acts that he has participated in.

The defense in their opening statement indicated that the State would be unable to prove that the defendant was ever in Yuma County or was anywhere near the scene of the murders. That is not quite correct. The State has proved that the defendant was in Wenden, Arizona, which, as you recall from Officer Young's testimony, is in his district and he is a Yuma County Deputy Sheriff. Wenden is in Yuma County, although that is not really what is important.

In this case we have proved that the defendant was in Wenden which is only a short distance, some 70 odd



miles from the place where the murders occurred. And the State has proved that he was there on the same day that the murders occurred.

[418] MR. BAGNALL: May it please the Court, may I have the indulgence of the Court for just a moment.

(Whereupon, Mr. Bagnall left the courtroom momentarily and returned.)

MR. BAGNALL: I beg the Court's pardon and counsel.

MR. IRWIN: As I was mentioning to you the State has proved that the defendant was in Yuma County and he was there the very same day that the murders occurred. We don't know exactly what time the murders did occur. We know that John Lyons left his home in Yuma some 60 miles south of where the murders happened and they left there between 11:00 in the evening of the 30th and 2:00 a.m. on the 1st. The approximate driving time was an hour. It means he could have been at the scene of the murders anytime between midnight and, say, 3:30 in the morning.

He would have been in that general vicinity, had he gone straight in that direction, and we know that the other sort of end of the time reference that the defendant and some of the other people were in Wenden at about 10:30 to 11:00 the next morning and that's some 70 miles north and east of Palm Canyon Road. So there is some period of hours there from, say, midnight to an hour before these people would have got to Wenden which would have been about 9:30, so roughly this period of hours. We don't know exactly when John Lyons and his family was [419] murdered. We don't know exactly what happened, although we know he was murdered and who murdered him, but there is a sort of time lag in the evidence, but the defendant in this case is connected with that scene closely. He was a short distance from it and he was there at about the time that the things happened.

We know that the defendant was with this group when they left the prison. We know he was with this group in Wenden. We know his prints were on the car. We know that he was in Flagstaff with this group of people and we know that he was with this group of people when they were captured on August 11. The reasonable inference is that he was with this group of people when the murders happened.

Ladies and gentlemen, the State has proved that the defendant was part of this conspiracy, that these murders were done by this group of conspirators and that these murders fall under the felony murder rule.

At this time the defendant through his attorney will be speaking to you through argument and I would ask you to listen to him. At the close of the argument I will be permitted to speak with you again, perhaps to answer some of the arguments that he might raise.

THE COURT: Mr. Bagnall.

MR. BAGNALL: If it please the Court, counsel for the State of Arizona, and ladies and [420] gentlemen of the jury.

Ladies and gentlemen, we are here today, met, at the final part of a long trial. And I think it's very interesting to note that while we have listened to the county attorney for a little over one hour that it wasn't until the very, very last moment that he came up to the great point in this entire matter, that is the point of where—whether or not Raymond Tison was present with the rest of the people who were involved in the situation that came up out on the Quartzsite Road.

You have a sworn duty and that is to arrive at a fair and impartial verdict which can be based solely on the evidence presented here in Court and none other. You must remember that each of you took a solemn oath to lay aside anything which you have previously seen or heard and to judge Raymond Tison solely on the evidence produced here in court.

Throughout this trial Raymond has been securely armored with the almost impenetrable shield of the presumption of innocence. This armour can be pierced only when the State has proven a material element of its case beyond a reasonable doubt. Remember also that you may not build an inference on an inference and the Court will so instruct you. The State has and will talk to you long and tediously about conspiracy and the Court will instruct you on the elements of conspiracy. The only evidence of conspiracy comes from three witnesses because the conspiracy is something that has to exist before [421] something happens.

The only evidence of conspiracy comes from the testimony of three witnesses. First the gunsmith, Whittington, but if you will recall he stated after close questioning that Ricky and he were doing the talking and it was his opinion that Raymond could not hear what they were saying.

Again we have Mr. Taylor from Gilbert Pump Company. Now Mr. Taylor stated that Raymond had asked him to machine a barrel; that he had never seen the barrel that he wanted to machine and that the matter just sort of dropped out of the conversation.

And finally we have Joe Tyson. This despicable so-called human being traded on his position as a brother of their deceased father and harbinger of news of the father's death to gain access to Raymond and to secure favorable treatment for himself by slyly taping his conversation with his nephew Raymond. This man is a liar and is so low that the hand of God reaching down into the mire couldn't elevate him to the depths of degradation. You could ignore his testimony. Thus falls the issue of conspiracy.

You must now apply the rule of reasonable doubt in light of what you have seen and heard during this trial. The Court will instruct you as to the meaning of reasonable doubt. Listen carefully to that instruction. You will have a copy of those instructions when you go to

the jury room. When you do that look into [422] that instruction again. It is a very, very important instruction. You must then apply this meaning to each material fact that the State wishes to prove.

In much the same manner as the county attorney did I can say that these other things they proved. Was there a prison break and was Raymond a participant? Yes. Did two inmates escape from State Prison? Yes. Was there a car stolen? Yes. Did Raymond leave the prison with the escapees? Yes.

You remember when Mr. Gustafson was sitting on the stand he said he saw five people leave the prison that day and got in that car. I took him back to his statement. The statement was—they are required to write out their report almost immediately. They are made on the last day of July, or next day in his statement, his written statement he said four or five people he saw leave the prison. So we can't rely on his testimony when he remembers that he had five people six months afterwards when the day after he said four or five people.

We come now to the fundamental key question, was Raymond with the others at the time of the car theft, robbery, and homicide. Examine all the evidence and decide whether or not fair minded men can differ as to whether or not the State has proved all of its case beyond a reasonable doubt. Despite the fact that the State has paraded before you a massive display and panoply of death, firearms, and stolen property it has failed [423] miserably to prove the key fact upon which the State's case must rest.

The key question is very simple in its asking and in its answer. We submit that the State has fallen far short of proving beyond a reasonable doubt that Raymond was present at the Quartzsite location at anytime.

Raymond's plea of not guilty places the issue squarely before you, ladies and gentlemen. By your sworn oath you have assured him that he will be tried in this court only upon the evidence presented in this court. Ladies



and gentlemen of the jury, if you live up to your oath we have no fear of the outcome of this case. Thank you for your time and your patience and may God defend the right.

MR. IRWIN: A couple of things that Mr. Bagnall touched on, one as to whether or not the defendant was a member of the conspiracy. Keep in mind that in addition to the evidence about a person being part of a plan the instruction on conspiracy, as I previously described it to you, indicates that evidence of conspiracy may come from many sources and in this case one of those sources is the concert of action. In other words, are people acting together in similar ways and from this you have clear evidence that the defendant was involved with these other persons in avoiding or preventing lawful arrest.

Conspiracy often times is thought of as that plan which leads to the crime, but that is [424] not necessarily correct. Conspiracy may continue throughout the course of the event and you can see from all of the evidence that the defendant in this case acted together with other persons to avoid and prevent lawful arrest throughout this whole period that these people were out and from these facts infer that he was in concert and in agreement with these other people to avoid and prevent lawful arrest.

As far as the defendant's presence at the scene of the homicide, one of the other instructions that you will receive reads as follows, it says: All persons concerned in the commission of an offense whether they directly commit the act constituting the offense or aid and abet in its commission though not present are responsible for the commission of the offense. The State has proved that the defendant in this case was present, but even if we hadn't he is responsible for the acts of co-conspirators whether he was there or not if he was a conspirator and there was a felony. And a group of those conspirators killed someone. If he was a member of that conspiracy

he is responsible for those acts whether he was present or not, but the evidence is clear that he was in fact there and he was in fact involved in this incident.

If as Mr. Bagnall argues he left this group of people there at the prison how did he join up with them again in Wenden, Arizona, the same day that the murders occurred? That is something that is an [425] inference that is totally unreasonable in this case that the defendant could have left this group of people and somehow connected up with them again the same day as the murder some 70 miles away from the scene of the murders. The evidence is clear he was with them from the beginning to the end, although as I explained to you, this is not something that the State has to prove.

One other point that I would like to make in closing is that in this instance we have dealt with evidence which is circumstantial evidence and the evidence which proves that the defendant was there at the scene of the murders is not direct evidence, it is circumstantial evidence that is drawn from any other part of this case, yet the State does not have to produce a witness who was there, who can testify, "Yes, I saw the defendant there at the scene of the murders."

The State may prove through circumstantial evidence that he was there. And you are permitted to draw logical inferences from the evidence. And this is an analysis, if you will, that we have gone through just a few minutes ago, all of which indicates that the defendant was present, including the fingerprints, his presence at a time shortly after that in the same vicinity doing something connected with the property stolen from the victims, and later possessing property of the victims himself.

But if there is a reason that we are forced to go to these, if you will, circumstantial [426] evidence to produce the case and that is because the victims in the case were murdered we can't call John Lyons to testify that this defendant was there because he is dead. We can't

call his family to testify because they are dead. And we can't call Teresa Tyson to testify because she is dead; nevertheless, through the circumstantial evidence in this case the State has proved that these killings were under the felony murder rule. The State has proved that these killings were the result of a gang of conspirators and the State has proved the defendant in this case was one of these conspirators. And under the law as you have taken the oath to follow you must find the defendant guilty of the offenses with which he is charged.

THE COURT: Ladies and gentlemen, earlier in the trial I gave you some of the rules you are to follow in considering this case. I will now repeat some of those rules and I will give you additional rules which you must follow.

I will instruct you on the law. It is your duty to follow the law. It is also your duty to determine the facts. You must determine the facts only from the evidence produced here in court. You should not guess about any fact.

You must not be influenced by sympathy or prejudice. You must not be concerned with any opinion you may feel I have about the facts. You are the sole judges of the facts.

You must take into account all [427] of my instructions on the law. You are not to pick out one instruction or part of one and disregard the others; however, after you have determined the facts you may find that some instructions do not apply. You must then consider the instructions that do apply together with the facts as you have determined them. Decide the case by applying the law in these instructions to the facts.

You must find the facts from the evidence. The evidence which you are to consider consists of the testimony of the witnesses and the exhibits admitted in evidence.

At times I have decided whether testimony and exhibits should be admitted. When an objection to a law-

yer's question was sustained you are to disregard the question and you are not to guess what the answer to the question might have been. When testimony was ordered stricken from the Court record you are not to consider that testimony as evidence.

Do not concern yourselves with the reasons for these decisions. Admission of evidence in court is governed by rules of law.

You must decide the accuracy of each witness' testimony. Take into account such things as his ability and opportunity to observe, his memory, his manner while testifying, any motive or prejudices he might have and inconsistent statements he might have made. Consider his testimony in the light of all of the evidence in the case.

[428] The lawyers are permitted to stipulate that certain facts exist. This means that both sides agree that those facts do exist.

The rules of evidence ordinarily do not permit the opinion of a witness to be received in evidence. An exception to this rule exists in the case of expert witnesses. A person who by education, study, and experience has become an expert in any art, science, or profession may give his opinion as to any such matter. You should consider such expert opinion and weigh the reasons, if any, given for it; however, you are not bound by such an opinion. Give it the weight to which you feel it is entitled.

The State has charged the defendant with the crimes of murder in the first degree, armed robbery, kidnapping, and theft of a motor vehicle with the intent to deprive the owner of its possession permanently.

The charges are not evidence against the defendant. You must not think the defendant is guilty just because he has been charged with a crime. The defendant has pled not guilty. The defendant's plea of not guilty means that the State must prove every part of the charges beyond a reasonable doubt.



The law does not require a defendant to prove his innocence. He is presumed by law to be innocent. This means the State must prove all of its case against the defendant. The State must prove the [429] defendant guilty beyond a reasonable doubt.

The term reasonable doubt means doubt based upon reason. This does not mean an imaginary or possible doubt. It is a doubt which may arise in your minds after a careful and impartial consideration of all the evidence or from the lack of evidence. The State must prove all of its case against the defendant with evidence that the State itself gathers; therefore, the defendant is not required to testify. The decision whether to testify is left to the defendant acting with the advice of his attorney. You must not conclude that the defendant is likely to be guilty because he does not testify. You must not discuss this fact or let it affect your deliberations in any way.

In deciding whether the defendant is guilty or not guilty do not consider the possible punishment.

The defendant has introduced evidence of his good character. Consider the evidence of good character together with all the evidence. If you are convinced beyond a reasonable doubt the defendant is guilty of the crime charged you must not use the evidence of good character as an excuse to acquit the defendant.

Running away or hiding after the crime has been committed does not in itself prove guilt. You may consider any evidence of the defendant's running away or hiding together with all the other evidence.

If you determine that the [430] defendant possessed property recently stolen from an individual that is one circumstance you may consider in reaching your verdict; however, this circumstance alone is not enough to permit you to find the defendant guilty.

All persons concerned in the commission of an offense whether they directly commit the act constituting the offense or aid and abet in its commission, though not

present, are responsible for the commission of the offense. The testimony of a witness, a writing, a material object, or anything presented to the senses offered to prove the existence or non-existence of a fact is either direct or circumstantial evidence.

Direct evidence means evidence that directly proves a fact without any inference and which in itself if true conclusively establishes that fact. Circumstantial evidence means evidence that proves a fact from which an inference of the existence of another fact may be drawn.

An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts established by the evidence.

It is not necessary that facts be proved by direct evidence. It may also be proved by circumstantial evidence or by a combination of direct evidence and circumstantial evidence. Both direct evidence and circumstantial evidence are acceptable means of proof. Neither is entitled to any greater weight than the other.

You may make reasonable [431] inferences from the facts brought out in evidence; however, if an inference which you might make is based upon an underlying inference which you have made from the facts, then the first inference must be established to the exclusion of any other reasonable theory rather than being a probability before you may make the second inference.

A conspiracy is an agreement between two or more persons to commit a public offense or crime. One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand a person who has knowledge of a conspiracy, but happens to act in a way that furthers some object or the purpose for the conspiracy does not thereby become a conspirator.

Before you may find that the defendant or any other person has become a member of a conspiracy the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed and that the

defendant or other person who was claimed to have been a member wilfully participated in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy.

To act or participate wilfully means to act or participate voluntarily and intentionally and with specific intent to do something the law forbids or with specific intent to fail to do something the law requires to be done. That is to say, to act or participate with the bad purpose to either disobey or to [432] disregard the law, so if a defendant or any other person with the understanding of the unlawful character of a plan knowingly encourages, advises, or assists for the purpose of furthering the undertaking or scheme he thereby becomes a wilful participant conspirator.

One who wilfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed you should consider the actions and declarations of all the alleged participants. It is not necessary in proving a conspiracy to show a meeting of alleged conspirators or the making of an express or formal agreement.

The formation and existence of a conspiracy may be inferred from all circumstances tending to show the common intent and may be proved in the same way as any other fact may be proved, either by direct evidence of the fact or by circumstantial evidence or by both direct and circumstantial evidence.

The acts and statements of a conspirator when said or done in furtherance of the conspiracy and during its continuance are binding on all participants in the conspiracy; however, the acts and statements of a conspirator are not binding on other participants in the conspiracy if they occur after the object of the conspiracy has been consummated.

[433] A person who conspires with others to escape from legal custody or to avoid or prevent lawful arrest.

to perpetrate or attempt to perpetrate robbery or kidnap is responsible for the acts later committed by co-conspirators as a part of and during the conspiracy.

Theft of a motor vehicle is committed by taking from another a motor vehicle with the intent to deprive the other of possession. Such intent may be to permanently deprive the other of possession or to temporarily deprive the other of possession. If you determine that the defendant took a motor vehicle from another you must then determine whether he meant to temporarily or permanently deprive the person of its possession. If you find the defendant intended only to deprive the person of its possession temporarily you must find the defendant not guilty of the theft of a motor vehicle with the intent to deprive the owner of its possession permanently.

Armed robbery is the taking of personal property in the possession of another from his person or immediate presence and against his will accomplished by means of force or fear with a gun or deadly weapon.

A person who seizes, confines, inveigles, entices, decoys, abducts, conceals, or carries away an individual by any means whatsoever with the intent to hold or detain or who holds or detains any individual for ransom, reward, pecuniary benefit, or otherwise or as [434] a shield or hostage or to commit extortion or robbery or a person who aids or abets any such conduct is guilty of kidnapping.

Murder is the unlawful killing of a human being. The thing that distinguishes murder from all other killings is malice.

There are two kinds of malice. A person has one kind of malice when he deliberately intends to kill. If you determine that the defendant used a deadly weapon in a killing you may find malice. If you determine that the defendant had no considerable provocation for the killing you may find malice.

Murder which is committed in avoiding or preventing lawful arrest or effecting escape from legal custody or in



the perpetration of an attempt to perpetrate robbery or kidnapping is murder of the first degree. A murder committed in avoiding lawful arrest or effecting escape from legal custody or in the perpetration of or attempt to perpetrate robbery or kidnapping is murder in the first degree whether wilful and premeditated or accidental.

An accused cannot be convicted of murder under these circumstances unless the deaths and the perpetration of or attempt to perpetrate the alleged armed robbery, kidnapping, avoidance of lawful arrest or escape from legal custody were part of one continuance transaction and were closely connected in point of time, place, and causal relation.

[435] There is no requirement that the killing occur during the robbery, kidnap, escape, or avoiding lawful arrest or that the killing be part of those crimes other than the act be part of a continuous transaction.

All 12 of you must agree on a verdict. All 12 of you must agree whether the verdict is guilty or not guilty.

When you go to the jury room you will choose a foreman who will be in charge during your deliberations and who will sign your verdict.

You will be given 20 forms of verdict on which to indicate your decision. I'm going to read these to you now, not in any order or significance, but simply in the order in which they were given to me and omitting the formal caption on each.

The first form of verdict reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find the defendant guilty of the commission of the crime of armed robbery of John F. Lyons.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The Defendant not guilty of the commission of the crime of armed robbery of John F. Lyons.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do

find: The defendant guilty of the [436] commission of the crime of armed robbery of Donnelda Donna Lyons.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of armed robbery of Donnelda Donna Lyons.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of kidnapping of John F. Lyons.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of kidnapping of John F. Lyons.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of kidnapping of Donnelda Donna Lyons.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of kidnapping of Donnelda Donna Lyons.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission [437] of the crime of kidnapping of Teresa Jo Marie Tyson.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of kidnapping of Teresa Jo Marie Tyson.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of murder in the first degree of John F. Lyons.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of murder in the first degree of John F. Lyons.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of murder in the first degree of Donnelda Donna Lyons.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of murder in the first degree of Donnelda Donna Lyons.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon [438] our oaths do find: The defendant guilty of the commission of the crime of murder in the first degree of Teresa Jo Marie Tyson.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of murder in the first degree of Teresa Jo Marie Tyson.

The next form reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant guilty of the commission of the crime of murder in the first degree of Christopher Lyons.

The next reads, we, the jury, duly empaneled and sworn in the above entitled action, upon our oaths do find: The defendant not guilty of the commission of the crime of murder in the first degree of Christopher Lyons.

. . . .



CASE NO.: 9299

STARS

**PRESENTENCE REPORT**

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Case No: 9299

STATE OF ARIZONA, PLAINTIFF

vs.

TISON, RAYMOND CURTIS, DEFENDANT

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**OFFENSES:** Four (4) Counts of Murder First Degree;  
Three Counts (3) of Kidnapping; Two (2) Counts of  
Armed Robbery; One (1) Count of Grand Theft Auto.  
**FELONIES**

**PENALTY:** § 13-451, § 13-452, as amended, and § 13-  
453, as amended. § 13-492(AC) as amended. § 13-643,  
as amended and § 13-672, as amended.

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**JUDGE:** The Honorable D.W. Keddie  
Division Three

**DATE:** March 7, 1979

**ADDRESS:** Arizona State Prison  
Florence, Arizona 85232

**ETHNIC:** Caucasian

**ALIAS:** None

**PROSECUTOR:** Michael Irwin

**AGE:** 19 (DOB: 10/31/59)

**ATTORNEY:** Harry Bagnall

**FBI NO:** 292-636-T9

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## STATEMENT OF OFFENSE:

On August 9, 1978, Warrants were issued for the arrest of the defendant, Raymond Curtis Tison, charging him with Three (3) Counts of Murder in the First Degree; Three (3) Counts of Kidnapping; Two (2) Counts of Armed Robbery and One (1) Count of Theft of a Motor Vehicle. On August 17, 1978, and after the recovery of a Fourth (4th) victims body, the entire case was presented to the Yuma County Grand Jury, and a Fourth (4th) Count of Murder in the First Degree was added to the original charges.

On August 11, 1978, this defendant, Raymond Curtis Tison, and two (2) co-defendants were arrested by Arizona Law Enforcement Officers in Pinal County, Arizona. These co-defendants being Ricky Tison, and Randy Greenawalt. Two additional co-defendants, Donald Joe Tison, who was killed during an exchange of gun fire with officers at the time of arrest, and Gary Tison, father of the defendant, whose body was found eleven (11) days later, a short distance away, having died of heat exposure.

A jury trial was held on March 6, 1978, and the defendant, Raymond Curtis Tison was found guilty by the jury of the following charges: Four (4) Counts of Murder in the First Degree; Three (3) Counts of Kidnapping; Two (2) Counts of Armed Robbery and One (1) Count of Grand Theft Auto.

## OFFICERS VERSION OF OFFENSE:

The circumstances surrounding this case are taken from the Yuma County Sheriff's Report #P-10755-78; Medical Examiner Reports, J78-75/5265, J78-71/5261 and J78-70/5260; numerous FBI Laboratory Reports; Arizona Criminal Investigation Team Reports and Summaries; Final County Sheriff's Department Report #78-45861 and the Defendants Statements.

These circumstances are as follows: Sometime on or about August 1, 1978, the victim in this case, John Lyons,

age 24; Donnelda Lyons, his wife, age 23, Christopher Lyons, his son, age 22 months and a Niece of John Lyons, Teresa Tyons, age 15, left the Yuma area on a vacation. They were driving a 1977 Mazda automobile belonging to the Lyons Family. On August 6, 1978, at approximately 4:00 p.m., an Arizona Fish and Game Officer found the Lyons Family shot to death in and around a 1969 Lincoln Continental automobile. A search of the area failed to locate the 15 year old Niece, Teresa Tyson. The car and bodies of the Lyons Family were found .7 of a mile from Highway 95 at approximately Milepost 84. John Lyons body was found approximately 25 feet to the rear of the car. The Autopsy Report shows he received shotgun wounds in both wrists; shotgun wound to the back of left shoulder, shot at close range; shotgun wound of right abdomen and chest; shotgun wound at close range left rear of skull; and shotgun wound of upper left chest. Cause of death listed as shotgun wounds of head and chest.

The body of Donnelda Lyons was found in the back-seat of the Lincoln automobile slumped over in the seat holding her 22 month old son, Christopher. The Autopsy Reports state she received a close range shotgun wound at the left rear of her skull; a close range shotgun wound of the right chest and a shotgun wound of the left chest. Cause of death listed as a shotgun wound of head and chest.

Body of Christopher Lyons was found in his mother's arms in the back seat of the Lincoln automobile. The Autopsy Report shows he received a shotgun wound to the left side of head. The cause of death is listed as shotgun wound to the head.

At the scene of the Murder, Officers recovered thirteen (13) spent 16 gauge shotgun shells, five (5) spent 20 gauge shotgun shells and two (2) spent .45 caliber cases.

Through investigative leads the officers found that Gary Tison, Donald Tison, Ricky Tison, Randy Greenawalt and the Defendant, were suspected of committing these Homicides. Due to the fact that Teresa Tyons

body had not been found, it was thought the five had taken her as hostage.

On August 11, 1978, after Ricky Tison, this Defendant, Raymond Tison and Randy Greenawalt were captured at the Pinal County Road Block. After their capture an interview followed, one of them (unknown to this officer) told where Teresa's body might be located. A search of the area was again conducted and Teresa Tysons body, along with the Lyons family dog, also dead, were found .2 of a mile from the location of the Lincoln automobile, where the Lyons bodies had been found earlier. It appeared that she was trying to reach Highway 95, as she had travelled in that direction.

The Autopsy Report shows Teresa Tyson received a shotgun wound to the right hip and apparently bled to death, but as the report states because of the extensive decomposition they were unable to determine if there were other wounds. The cause of death is listed as a shotgun wound to the right hip.

On August 11, 1978, the Lyons Family automobile, that had been stolen from them, after their Murder, was found hidden near Flagstaff, Arizona. On August 17, 1978, the Arizona State Crime Laboratory identified one (1) fingerprint belonging to Ricky Tison, two (2) fingerprints belonging to Donald Tison and the (1) fingerprint belonging to Randy Greenawalt in the Mazda car.

When the car was recovered it was found that both front seats, and the radio were missing. The car had been repainted to a gray color and the license plates were also missing.

A Time Chart furnished with the reports, show that the three (3) surviving Defendants in this case, had been involved in the following crimes: On July 30, 1978, the Tisons had effected an Escape of their father, Gary, and Randy Greenawalt from the Arizona State Prison with the use of loaded firearms. The above mentioned Defendants, murdered the John Lyons Family and their Niece,

Teresa Tyson, as well as robbing them and stealing their automobile. In the State of Colorado, the Defendants Murdered, Robbed and Stole the car of James and Margene Judge. The Defendants on August 11, 1978, ran two road blocks in Pinal County, shooting at the deputies who were trying to stop and arrest them, resulting in the gun shot death of one of the co-defendants, Donald Tison, and the subsequent death of co-defendants, Gary Tison, whose body was found on August 22, 1978, in the desert area near the road block, which he escaped. All of the above crimes occurred within thirteen (13) days, coming to a conclusion at the time of their arrest on August 11, 1978.

At the time of their arrest, the Defendants and Co-defendants had the following weapons in their possession:

1. 1-Dakota .45 caliber Revolver, serial # 52941 bought by Dorothy Tison on May 20, 1978, from a gun dealer in Casa Grande, Arizona, who was a friend of Ricky Tison.
2. 1-Smith and Wesson .357 Magnum Revolver serial # S164017.
3. 1-Colt caliber .38 automatic, serial # J357096, which was in the possession of Donald Tison when he was killed at the road block.
4. 1-Erma Werke .380 caliber automatic, serial # 105020.
5. 1-Colt .45 caliber automatic, serial # 32215. This weapon was found under the body of Gary Tison at the time of recovery of his body.
6. 1-Rohm .22 caliber Magnum Revolver, serial # 1L8284, this weapon had an extra cylinder.
7. 1-Winchester Model 70 caliber .264 Magnum Rifle, serial # 29148.



8. 1-Forehand Arms 12 gauge shotgun, serial # 50081, the barrel of this weapon had been sawed off.
9. 1-Beretta 12 gauge shotgun, serial # CC4268 stock and barrel sawed off in this weapon.
10. 1-Browning 16 gauge shotgun, serial # G860854.

From Information gathered on the above weapons, the .380 automatic was owned by a business partner of the man that sold Mrs. Tison the .45 caliber revolver. When the man was questioned regarding the gun, as to who he sold it to, he, the man, said he sold the automatic to an unknown subject in a bar, in 1976.

This Defendant, Raymond Tison asked a machinist who worked for the same company as he did, the Gilbert Pump Works, if he would "turn down" a shotgun barrel for him, Mr. Taylor refused. This was before the escape from the Arizona State Prison.

Through the witnesses statements, who were present during the escape from the Arizona State Prison, indicated that Gary Tison was armed with a .38 caliber revolver with a silencer attached. That Randy Greenawalt was armed with a shotgun; Donald Tison was armed with a shotgun; Ricky Tison was armed with a shotgun; and the Defendant, Raymond Tison was armed with a shotgun.

Through information gathered from the FBI report of the thirteen (13) 16 gauge shotgun shells found at the scene of the Lyons Family and Teresa Tyson Murder, all but one (1) has been identified as being fired from the Browning 16 gauge shotgun, serial # 8513067. Of the five 20 gauge shotgun shells found at the Lyons-Tyson Murder Scene all five (5) have been identified as being fired from a Master-Magnum 20 gauge shotgun serial # G860854. The .45 caliber cases that were found at the scene had been fired from the Dakota .45 caliber, serial # 52941.

For a more detailed account of the circumstances involving this case, all reports will be in the possession of the Interviewing Officer for reference by Your Honor upon request.

#### DEFENDANT'S STATEMENT:

Attached to this report you will find a copy of the oral statement given by the Defendant, Raymond Tison, on August 11, 1978, at 5:10 a.m., to Pinal County Sheriff's Officers after his arrest.

On January 26, 1979, Raymond Curtis Tison, and Ricky Wayne Tison, were going to enter into a Plea Agreement, with County Attorney, Michael Irwin. At the time the Plea Agreement was being discussed, Raymond Tison, gave the following oral statement to Mr. Irwin, Officers of Pinal County, and the Defendant's Attorney, Harry Bagnall was also present. (A copy of that statement will be attached to this report).

On March 8, 1979, this officer went to the Yuma County Jail and conducted an oral interview with this defendant, Raymond Curtis Tison. The interview started at 9:00 a.m., and ended at 11:00 a.m.

The following is a discussion that transpired during the interview. The defendant was asked if he would give me any statement regarding the incident occurring in Yuma County, in the death of the Lyons Family and Teresa Tyson. The defendant stated that due to the fact he was going to Appeal this Case, he would rather not make a statement regarding the Lyon-Tyson case.

This officer then asked the defendant if he would mind if I taped his statement, due to the fact I would use the tape for accuracy. At first the defendant stated, no, that he would rather not have the statements taped, as he had some bad experiences with tape recordings. At that time this officer turned the tape recorder off. I then went into great detail to explain to him that this tape was strictly just to help in the accurateness of my report.

The defendant asked who would gain information from this report, and it was explained to him the procedures and who had access to the report. He then told me, o.k., that I could turn the tape on. This officer then asked the defendant if he was aware of the maximum charge that he faced, and he stated that he did. The Justice System was then discussed, and what his, defendants, thoughts were on it. Again, the defendant asked where this report would go. It was explained to him that the County Attorney, would get a copy, Judge Keddle would get a copy, and a copy would be filed with the Clerk of the Superior Court. Defendant then asked if this report could be used in his Aggravation Hearing, and I informed him that I thought it could be. I advised Raymond at this time that I did have the statements that he issued at the time of the Plea Agreement, which he refused to go through with. He said that he did not think that the statement at the time of the Plea Agreement could be used in Court due to the fact that the Plea Agreement was not accepted.

#### CO-DEFENDANTS:

Ricky Wayne Tison, age 20. Found guilty of Four (4) Counts of Murder in the First Degree; Three (3) Counts of Kidnapping; Two (2) Counts of Armed Robbery and One (1) Count of Grand Theft Auto, on February 27, 1979. Defendant is awaiting sentencing on the above charges.

Randy Greenawalt, age 29. He was also found guilty by a jury of the following: Four (4) Counts of Murder in the First Degree; Three (3) Counts of Kidnapping; Two (2) Counts of Armed Robbery and One (1) Counts of Grand Theft Auto.

Other charges pending against the above listed co-defendants and the defendant are: Two (2) Counts Murder First Degree; Two (2) Counts of Kidnapping in the First Degree; Two (2) Counts of Conspiracy. These are pending in Del Norte, Rio Grande

County, Colorado. They were filed on November 6, 1978, for the Murder of James and Margene Judge. Trial Date unknown.

#### PRIOR RECORD:

Juvenile: During the interview with the defendant, he stated he had no prior Juvenile record, or Juvenile Court action.

When questioned more thoroughly about his Juvenile activities, he made the following statement, "I have always stayed away from things like that because my dad was in prison, and that was one place that I never wanted to be." At this time, I asked the defendant what in the world would make him break his dad out of prison with a loaded gun. He stated, "I thought my dad was being treated unfairly, we had been fighting this through legal means to get my dad out of prison, alot of people were trying to help us get him out." He continued by stating, "They, told my dad, they were never going to let him out, that they did not want him back on the streets, that they were afraid of him."

I asked the defendant who was afraid of him, meaning the dad. Raymond stated, "The authorities, Dad never did go into it too deeply. There wasn't much time out on the street between him and us." I asked how long he had been going to see his dad at the prison. He said quite a few years, but the last two or three years it had been almost every week, and before that it had been twice a month."

#### ADULT MISDEMEANOR ARRESTS:

The defendant was arrested on one occasion, this being in Casa Grande, Arizona on April 5, 1978. He was originally charged with Burglary, no-force, non-residence. He was questioned regarding this charge. He stated that the case was reduced to a Misdemeanor Petty Theft, and they, meaning he and his brother, Ricky, Plead Guilty in Jus-



tice Court. They were given Six (6) months Suspended Sentence and Ordered to clean up Six (6) miles of the highway. Really, it was twelve miles of highway, as it was six miles down one side and six miles down the other side.

Attached you find FBI rap sheet #292-636-P9, reflecting the defendant's arrest on the Misdemeanor charge in Casa Grande, Arizona, and his arrest on the Murder charges in Yuma County, which he is awaiting sentencing on.

Not reflected in this report are arrests and conviction of this defendant in Pinal County on the following: Thirteen (13) Counts of Assault With A Deadly Weapon; One (1) Count of Aiding and Abetting an Escape; One (1) Count of taking Prohibited Articles into The Arizona State Prison; Four (4) Counts of Assault With A Deadly Weapon; One (1) Count of Possession of a Stolen Vehicle; One (1) Count of Count of Fleeing or Attempting to Elude a Pursuing Law Enforcement Vehicle. After being found guilty by a Jury Trial in Pinal County of the above charges, the defendant received the following sentence: Two (2) sentences of Thirty (30) Years to Life to date from August 11, 1978; Four (4) sentences of Four (4) to Five (5) years in the Arizona State Prison to be served consecutively with the Life Sentence.

#### SOCIAL HISTORY:

The defendant was born on October 31, 1959, in Casa Grande, Arizona. His father being Gary Tison (deceased at the age of 44, also a co-defendant in this case). Defendant stated that his father's educational background was unknown. That his father was still legally married to his mother at the time of his death. When the defendant was asked if his father had any physical problems that he knew of, he stated the only thing wrong was that his father was over weight. Father was a prisoner at the Arizona State Penitentiary, Florence, Arizona.

The defendant's mother was Dorothy Tison, nee, Stanford, approximately 38 years of old. She resides at 2221 N. 61st Drive, Phoenix, Arizona. She is a high school graduate, is widowed, and the only physical impairment that she possibly might have would be high blood pressure. The mother works for an insurance firm as a secretary in Phoenix, Arizona.

From this marriage there were three children born. Donald being the oldest child, Ricky the second child, age 20, and the defendant, Raymond, age 19, the third and youngest child.

The defendant was asked who was most responsible for his early upbringing. He stated that his mother was, continuing by stating, his father was in prison for about 11 years. I then asked the defendant how long his father was out of prison, that he can remember. He stated, I can't remember how long he was out of prison, stating, when I was born he was out of prison, and then for a period of time he was home. Defendant stated the first thing that he can remember about his father is that at about the age of 4, visiting him at the State Penitentiary.

The defendant was asked to give me some information regarding his early home life. He stated, we had clothes and we had eats, we were a close family. The family was pretty stationary, they moved from Casa Grande, Arizona to California for a period of one year and then moved back to Phoenix, Arizona. He said that they lived with their mother, but would spend the Summers in Casa Grande, Arizona with their maternal grandparents, as they liked the town. He said they had friends and they went out, but they mostly stayed at home to keep their mother company.

Defendant was asked what the familys attitudes were regarding his arrest in this area. He stated, mom has mixed feelings, she doesn't like the idea of us being in prison. Dad was in prison for 11 years.

The defendant was asked how he was disciplined during his early years when he did something wrong. He

stated a few times I was spanked, stating, but, we really never got into any kind of trouble to speak of, we tried to keep mom happy.

This officer asked the defendant who in the family would be willing to help him, if help was required. He stated, anybody on my moms side of the family would help. As far as my dads side of the family, my dad had been away from his family since he was 13 years old. He told us all about his family, and i just don't trust them. Look what Uncle Joe tried to do to us! He was referring to the testimony by his Uncle Joe, who testified in Court as a Prosecution Witness.

#### MARITAL HISTORY:

The defendant has never been married, has no steady girl friends, and up to his arrest he had no plans for marriage.

#### PRESENT PHYSICAL AND INTERPERSONAL ENVIRONMENT:

This defendant was born in Casa Grande, Arizona, he moved to California for approximately one year at a young age, then moved back to Phoenix. Most of his life has been spent in the State of Arizona. At the present time, the defendant is housed in the Yuma County Jail awaiting sentencing on the charge which he was found guilty of. Prior to that he was in the Arizona State Prison for the conviction of the Pinal County Crimes.

#### ACADEMIC EDUCATION:

The defendant attended Maryvale High School, Phoenix, Arizona, and completed the 11th grade, this being in 1977. After a period of time he took the GED Exam and received his GED Certificate. He stated that he had plans to continue his education while in prison. The defendant appears to have no problem understanding and communicating in the English Language.

The defendant was asked why he quit school, and he said he just got bored with school, but that later he regretted not finishing school. He said he never realized the value of a diploma until he tried to get a job.

#### VOCATIONAL EDUCATION:

The defendant stated while in high school he took two vocational training courses, metal shop and mechanics. He stated that he enjoyed both of these courses, and later worked in a self-employed capacity, with his brother, Ricky, repairing automobiles.

#### RELIGION:

Defendant claims no religion.

#### INTEREST AND LEISURE TIME ACTIVITIES:

Defendant states he likes tinkering with cars and doing work that requires working with his hands.

#### SUBSTANCE USE OR ABUSE:

Alcohol: The defendant stated that he would class himself as a moderate drinker. Usage being two or three times a week. He said before the escape, when he drank he drank Rum and Coca-Cola, but that he also drank beer on occasion.

The defendant was asked if during the escape or after the escape if he did any drinking, or if he was drunk at any time during this period. He stated no. Defendant started drinking at the age of 15. He said that this was mostly on Saturday nights, and that he used to have to buy the liquor that they consumed, as he was the oldest looking one of the group that he ran with.

Marijuana: Defendant stated he tried it and used it to some extent, that up to about one year ago he used it about three times a week. Now it is on occasional basis. He started using marijuana at the age of 16.



Narcotics/Dangerous Drugs: The defendant stated he never used either, that he just never saw a need for that stuff. He was asked if he considered himself as an alcoholic, and he stated no.

#### PHYSICAL HEALTH:

The defendant is presently being treated for a bad cold by the nurse at the Yuma County Jail. Defendant was asked if he was allergic to any type of medication, and he stated none that he knew of. Defendant was then asked what types of illnesses he has had. He said at the early age of about 4 years, he was in the hospital for one week. He said he developed a rash of some type, but they never did find out what it was caused from. He said he was then treated on two different occasions. The first time being when he was about four years of age he was hit by an automobile, and received a bump on the head. He was treated and released. Then while living in California, he broke his arm, and this was taken care of in the doctors office.

Defendant states the last physical examination he had was upon his entry to the Arizona State Prison.

#### MENTAL AND EMOTIONAL HEALTH:

The defendant was asked what he thought of people. He said that he did not consider himself to be prejudice. He said that as long as people treated him right, that he would treat them right, but stated, "If you mess me up, you will never do it again."

He was asked if he had alot of friends, or if he was a loner. He said, I don't call people friends unless they are someone very close, they have to understand me and I have to understand them. He said he only considers his family as close friends, and his family on his mothers side. He continued by stating, he knows quite a few people, and they have done things, but they were not close. He stated, "I do not tell people about me until I devalueate

them." Stating, he is not paranoid, that he is just being sure. He was then asked what he thinks that people think of him as an individual. He said some like me some don't like me, you can not please everyone.

I asked the defendant who he would consider his closest friend. He stated my brother and my mother. He said that they are the only people I can trust. He said, I never have seen so much back stabbing since I got into this trouble, everyone is coming up with so many different stories.

The defendant was asked if he felt he had any mental or emotional problems. He stated that he did not feel that he had any. He stated that he has never been to a psychiatrist or psychologist with the exception of the evaluation done in January, 1979, that was done by Dr. McDonald. (This Evaluation is attached).

#### EMPLOYMENT HISTORY:

For the last two years the defendant has been unemployed on a regular basis. He has worked as a mechanic, self-employed, working on cars in his back yard.

For a period of time he worked for The Gilbert Pump Work Company in Phoenix, Arizona, rebuilding pumps. He has also done some roofing work, worked in service stations, as a service station attendant.

The defendant was asked what types of job that he thought he was qualified to do. He stated, I can do mechanic work, roofing, service station attendant, and painting. He then continued by stating, I can do almost anything I set my mind to do.

#### MILITARY HISTORY:

The defendant has never served in any branch of the United States Armed Services.

#### FINANCIAL HISTORY:

The defendant has no assets or liabilities at the present time.

## SPECIALIZATION:

This officer asked the defendant what his future plans were. With this question the defendant, Raymond, went into a long involved Statement regarding his feelings, which will give an idea of what this defendant is like. Statement is as follows:

"What do you mean, after 34 years? I figure I will be about 50 or 51. I will have to do 30 calendar years. While I am in Prison I plan on learning as much as I can. They have alot of smart people in Prison, highly educated people. I know a few of them over there. Some of them knew my dad and I can learn from them. I can learn from the school and library. I am not going to try and cram it in the first year. The first year you can't really set down and plan anything, because of the heat and all the propaganda from the newspaper." This Officer asked if he thought this influenced the Prison. He said, "I know it has, you know we just can't plan on anything, because you have to keep your eyes open, and watch yourself. I'm not about to ask for Protective Custody that just makes it worse. If you do that it just makes them think, 'This guy is running scared.' All I can do is just come out and face them." This Officer asked him if he hadn't said that his father had several friends in Prison and if so wouldn't they help him. He said, "I can't be sure they would. Everyone is just waiting to see the outcome of the situation. Everyone wants to know the true story. I think about it you know all the people my dad knew over there, I could run to them and they would help me out, but someone would kill me if they do. That's not the way its done anyway. They are just going to watch. I might get help as much as they can but you got to stand on your feet over there." This Officer asked him what type of a Prisoner his father was. He said, "You can check the Prison record and find out, as far as I know they never busted him for anything over there." This Officer asked him if his father was well liked. To which he stated, "No, not necessarily. They thought he was bad over there. I

found out that at least the administration did. Nobody messed with him. This Officer asked him when he found this out, if it was after the Escape. He said, "Well yea, and the way dad talked." I asked him how much his dad told him about Randy Greenawalt, before the escape. He said, "I only knew Randy that 12 days. He was intelligent and he impressed me but I still didn't know him. I pretty much stayed away from him. I figured my dad knew what he was doing." I asked if he placed all his trust in his dad for this whole deal. He said, "Yeh, you see I have never done anything like this before and neither had my brothers. We didn't know the first going, the first thing about it." I asked him how long they had been working on the escape. He said, "A few months before, I can't liking close to a year. We knew dad wanted to escape and get out, this here escape wasn't planned till the day before," This Officer informed him things sure went smooth for no more planning than that. He said, "We knew about it, but that was when we got drawn into it. It was planned out and dad said he was going to get some help to do it. We waited and waited and nothing happened. We just got tired of waiting, finally we said, 'Hey man, lets get it.' This Officer asked him if all 3 decided at one time to do this. He said, "Each one of us worked it out in our minds. We didn't have anything planned past the escape. You see that's the only part of this that we wanted." I asked him if all the events that transpired after the escape if his dad knew what he was putting him into, or if he thought his dad just didn't give a damn. He said, "No. I don't think he didn't give a damn about us. Him being with us is what got him killed and our brother." This Officer asked him in what way he felt this had caused his dad's death. He said, "5, people together are pretty hard to hide." I told the defendant that I still didn't see how he could blame himself for his dad's death. He said, "While we were on the run law enforcement called my mom and told her they had orders to shoot on sight. They were calling us dan-



gerous. They turned around and asked her to turn us in if we contacted her. I feel at that road block if they had caught him with us they would have killed us all right there. They didn't even know it was us until they found Donnie's I.D."

The defendant then went on to discuss the events of the Road Block, and about the deputies shooting at them until their Van stopped. He denied that anyone in the Van shot at the deputies until after they ran the first Road Block.

This Officer asked the defendant if he knew at the time the Escape was being planned that his dad or someone could have been killed in the Prison. He said, "we told dad we will do this on one condition and that is no one gets hurt, and he told us, 'Alright.' We had no intention to shoot anybody." He then said, "Who ever said those guns were loaded?" This Officer asked him if they were. He said, "Well, yes they were, in case something happened." This Officer asked the defendant, in thinking back if he thought he could have shot someone if it had gone sour. He asked, "At the Prison?" I told him, "Yes." He said, "It would have had to be a very close life or death situation. I could not have cold-bloodedly killed someone. No. But still I think I would have had some hesitation even then about killing anybody, I just really never thought of it. To kill all those people at the Prison would have been a senseless killing that is something I didn't want."

This Officer asked the defendant if when he started out he thought he needed the weapons because. He said, "Psychologically." He then went on to talk about what the guards had to say about the Escape in the Court Transcripts. He made mention of how one guard had stated how big the barrel of the guns looked. This Officer asked the defendant if he had ever had a gun pointed at him. He said, "The way I look at it is, 'Hey just shoot me and get it over with.' See death has never worried me." This Officer asked him if he didn't have any self-

preservation instinct to keep on living. He said, "Oh, I have self-preservation, yes. You know when the time comes. I am not going to worry about it much. The only thing that bothers me about it is my mom is going to be by herself. I am going to give them a fight anyway, at least they will know I am not giving up."

This Officer asked him with the 34 year Prison sentence he is facing, if he thought he would try to escape if he had the opportunity. He said, "Well, I will put it like this, I would try all the legal means first. We tried that with our dad though, and it did do no good. I have also, had my fill of running." I asked him what his thoughts were when he and Ricky were accused of Murder. He said, "I didn't like that you know, those Murder charges hanging over us." This Officer told the defendant that in one of the Statements, one of them had made, that they stated, "The only way to stop those Murders was kill our dad." He said, "We weren't even at the scene you know." This Officer asked him if he had been there, if he was saying that it would be the only way to stop his dad. He said, "Yes, yes that would have been it. I couldn't cold-bloodedly kill my dad. That would have meant putting a gun to my dad's head, and that's my father and I respect and love him. I don't think I could have brought myself to do it."

This Officer asked the defendant if, at any time after the Escape, his dad or Randy made any motion that there were going to be any killings. He said, "Yea, there was always the possibility, like we knew in dad's 1967 escape, he killed that guard. We knew he was in there on a Murder charge. There was a possibility we didn't want to believe it. You know we really never did have a life together on the street, about all we could do was see him on the weekends."

This Officer asked the defendant if he ever considered Randy dangerous. He stated, "I didn't know what he was in there for. After we have been in jail, I have found out quite a bit about him. While we were in Prison for

the two weeks I found out alot about him." (Raymond would not ever commit himself to answer this question.) The defendant then said, "He was my dad's man. Me, Ricky and Donny had some control over it during the escape. After the escape we lost all control." I asked him if their control was taken away or if they relinquished it. He said, "It was a little of both. My dad is a natural born leader, now you can check that out at the Pen and find that is true, he was. He was a very intelligent man, lucky and he had respect. He knew everything about it. It was kind of relinquished because me, Don or Ricky had no kind of knowledge at all about this. You know all this running and hiding you know, we knew dad had (the experience)."

This Officer asked the defendant if what he meant was they were all just taking orders after the Escape. He said, "Yea, that's about it." I asked him if from Rady too or from just his dad. He said, "He was running the show, he wasn't forcing us to do anything." This Officer asked if his dad would have let him leave at anytime. He said, "Yes, as a matter of fact just before we got arrested we were fixing to leave." This Officer asked if he meant he was going to split away from Randy and his dad. He said, "Yes, what it was you see, running around like that you get real edgy and don't sleep much or nothing, you get tired of looking over your shoulder you wonder what is going to happen next, are you going to get arrested around the curve or down the next block and I got tired. I did not like being on the run. Ricky got tired of it everybody got tired of it. We were just going to split." I asked where he was going to go. He said, "That is something we never decided. The idea to split was not to break up the group of 5, it was us we were tired of running and we were wanting to get away from dad, because we figured something or other was going to happen sooner or later." The defendant continued by saying that there were no arguments or anything and he was getting somewhat paranoid and he just wanted to lay low

until the statute of limitations ran out. I asked him why he and Ricky turned down the Plea Agreement. He said, "Judge Keddie was wanting things out of the Plea Agreement that were not originally agreed upon. We were fully informed what all that Plea Agreement involved. Most of the stuff was what Judge Keddie wanted. Some of these things were not agreed on. If we got on the stand and testified, he could come along and say, 'You did that wrong, you did this wrong' and revoke the Plea Agreement and there we would be standing trial." He then continued by saying that he was sure this was hard for me to see and he could see it from my point of view also. He went on to say he just had a gut feeling about the Plea Agreement. He continued by talking about the trial and how it was handled. How he felt the Conspiracy Prosecution was unfair. He further discussed the witnesses and how some of them lied. He also stated how badly Woods had done the Presentence Report, in Pinal County, and how he had twisted the words around.

Towards the end of the interview the defendant made the following statement. He stated, "I'm not a smart mouth and not a violent person and I'm easy going. I don't consider myself a criminal and all this. Part of the fault might rest with me because of the Escape, but still these other charges." This officer asked Raymond what his feelings were when he realized people were getting hurt in the deal, even though he had said he was not even at the scenes. He said, "I didn't like it, it was all just going against my grain and thats when I was really getting uptight about it. I was getting ready to leave there. Just the way listening to those newscasts you knew how things were going, things were hot." He further stated that being with his dad made his chances better. He stated, "Then after awhile I got to looking at it and I said, 'Boy I got to get out of this, this is no kind of life for me at all.' This Officer asked him if he was not sorry that they had pulled the Escape. He said, "Not at the time we pulled the escape, because we just wanted



to get dad out. In a way its better now that he is dead instead of in that Prison." This Officer asked him if he was saying that his dad and Donny were winners on this deal. He said, "Not Donny, I think dad was in the long run because I had this feeling when it came down to it, he was not going back to that Prison." I asked him if his dad had told him this or if it was just his feeling. He said, "Just a feeling. You would talk to him and put yourself in his position, that's what I always have done. Try to look at the other point. The other peoples, the other peoples side. My mind was just going in circles and I didn't know what to think. The Prison Escape went so smooth it really hipped me. Then everything gets going and you don't know what to think." This Officer asked the defendant if he was ever scared. He said, "Surely plenty of times. Like standing guard at night, you get to see things moving around you think well here they come. I guess paranoia is what you call it. I was down with that, that's when we decided, we got to get out of this because you can't really trust your judgment. That's what screwed me up because I have always tried to make logical decisions, and being the first time at any criminal activity you know it was just going wild. You know stealing two cases of beer was nothing." He further described how he and Ricky took the beer in Casa Grande. For their arrest and the sentence. He then said, "Ricky went down and got a job and he didn't have to walk the 12 miles cleaning up the Highway and he had to end up doing all that by himself. He said he collected 2200 pounds of garbage on that road it took him 3 days. I asked him if he had to spend any time in jail on that charge. He said, "No, this is the first time I have ever been in jail." He then described his arrest at the Road Block and jailing, and Ricky's escape from the Pinal County Jail.

This Officer talked to Mrs. Tison, and asked her to contact the references and advise them to send in letters to me prior to March 26, 1979.

## SUMMARY AND EVALUATION:

I find it somewhat strange that this defendant still denies being the Yuma area at the time of the Lyon-Tyson Murders. Even though he is aware that I have in my possession the statements which he and his brother gave at the time of the proposed Plea Agreement, which was later withdrawn.

This defendant was a very soft spoken individual, with a fairly good personality. The beginning of the interview was somewhat strained, but as it progressed he, loosened up and began to talk more freely. Due to the fact that the other two co-defendants have elected not to be interviewed I have obtained as much information as I could from this defendant. In the long statement which he gave under Socialization of this Presentence Report, there were some statements made, that this Officer expresses some concern over. These areas are: The beginning of the statement, his early connections as they appear with the prison population. As stated, when he expressed that his father had several close friends still in prison, and their possible help if it was required. Also, throughout this statement, as well as through other information gained through psychological reports, this defendant had a very strong respect and reserve for his father. He still maintains that they only knew 2 days prior to the escape that he and his two brothers were going to take an active part in this. Although, he admits that they had been planning it for some period of time. This Officer had doubts that these three individuals could pull a Escape from the Arizona State Prison as smoothly as this one seemed to go, without considerable pre-planning. The defendant stated that other than the escape there were no plans of what would happen afterwards. With the great lengths that he, and at least his brother went to, to get weapons, gain automobiles, etc. It is difficult to believe that they had no plans, or what they were going to do, after the escape. Also, in his statement at this point, he denies any shooting occuring from the Van at the first on-set of the Road Block, although

in one of the statements made, it is understood that they did start shooting prior to the First Road Block.

When I asked the defendant if he ever thought when they were planning the break out at the prison, if someone might possibly get killed in prison. He stated, that they had informed their father that was one condition that they would have to go by, that no one get hurt. I then explained to him that entering a prison with loaded weapons was a pretty "gutty" thing to do. He stated, "We had no intention to shoot anybody." He then continued by stating, "Who ever said those guns were loaded." I then pointedly asked him, "Were they, Raymond?" He said, "Well, yes they were, in case something happened." This Officer asked, "Raymond could you have shot somebody if the whole deal had gone sour?" He asked, "At the Prison." And I said, "Yes." He said, "It would have had to have been a very close life or death situation. I could not cold-bloodedly killed someone, no. Still I think I would have had some hesitation about killing anybody, I just never really thought of it." He continued by stating, "To kill all those people at the prison would have been a senseless killing, that is something I did not want. I asked him, "Well when it started out why did you think you needed weapons?" He stated, "Just strictly psychological."

Further into the interview he made some comment that was by a guard when he looked at the receiving end of one of the shotguns, and told in the Court Transcript how big it looked. I then asked the defendant if he had ever looked down the barrel of a gun. He stated, "The way I look at it is this, 'Hey, just shoot me and get it over with.' See death has never worried me." I asked him if he didn't have any self preservation instincts to keep himself alive. He said, "Oh I have self preservation sure, but when the time comes, I am not going to worry about it much, the only thing that bothers me about it is my Mom, she is going to be by herself." He said, "I am going to give them a fight anyway. At least they will know that I am not giving up." This Officer asked the

defendant, with the 34 year Prison sentence that he now faces, if he thought that he would ever try to escape, if he ever had the opportunity. He said, "Well, I will put it like this, I would try all the legal means, first. We tried those with my dad and they didn't do too much good. I have also had my fill of running." Also, during the statement, I talked to him regarding his father. I then informed him that on one of the statements, one of you said, the only way to stop those murders, meaning the ones of the Lyons Family and Teresa Tyson was to kill our dad. He said, we weren't even at the scene you know. I said well if you would have been there are you saying this is the only way that you could have stopped him. He said yes, that would have been it. He then continued by stating, I could not have cold-bloodedly killed my dad, that would have meant putting a gun to my dad's head and that is my father and I respect and love him. I asked the defendant, after the escape, did you, your father or Randy make any motions that there were going to be any killings. He said yea, there was always a possibility. Like we knew that during dads, 1967, escape he had killed that guard. We knew that he was in there on a murder charge, there was that possibility we didn't want to believe it.

He was questioned as to what his knowledge of Greenawalt's past activities. He denies any knowledge of Greenwalts activities or history until after he had been committed to the Arizona State Prison himself to serve a sentence. Also, in the statement he talks about control he, Ricky and Donald had some control of it during the escape, but, after the escape we lost all control. I asked him if that control was taken away from him, or if he just relinquished it. He said, a little of both, you know my dad was a natural born leader. He said you can check that out at the "penn" and find that it is true, he was. He then went on to state that one of the reasons the control was relinquished to his father is that he had the experience in Escaping and they felt if any of them were going to survive they were going to have to stay



with him. He acknowledged that they were not forced to stay with the father and Greenawalt, after the escape. Also, I asked the defendant what his feeling were when he realized that people were getting killed. He said I did not like it, it was just going against by grain, and that is why I was really getting up tight about it, I was getting ready to leave. He said just by listening to the newscasts you knew how things were going, and that things were hot. He said however, they felt by being with their father that the chances of escaping were better.

It was noted during the entire interview that at no time did this defendant, ever really express any remorse towards what had happened to any of the victims in this crime. Perhaps this is due to the fact that he refuses to admit that he was at the scene of this crime. He does show some remorse over the death of his brother, Donnie, and a certain amount of relief to the effect that there were not killings done at the prison, as he stated, it would be so senseless to kill all of those people. The defendant constantly implied and stated that he is not a violent person and he does not think that he could kill anyone unless it was a close life or death situation. This Officer cannot understand how this defendant could be a witness to the Lyons-Tyson murder, which there is no doubt in my mind he was a witness to this, and if as he stated is so opposed to killing, how he could not show some remorse for this family. However, as you read through this statement, there are other areas where he shows strong and harsh feelings regarding to other individuals even to death itself, where he is involved. I find it somewhat strange that this defendant would not admit to being in the Yuma County when this crime was committed, although all during his statement, he keeps referring to the 12 days that he was with his father, and how readily he admitted that the guns were loaded when he went into the Prison, after stating that no one can prove that the guns were loaded.

#### AGGRAVATED CIRCUMSTANCES:

After reviewing this report and statements made by this defendant Raymond Curtis Tison, this Officer finds the following Aggravating Circumstances; This defendant, Raymond Curtis Tison, literally broke into a Maximum Security Prison in possession of loaded firearms and effected the escape of two dangerous murderers, the father being known to this defendant as a murderer. This defendant along with his brothers, appeared to be the main instigators in locating, purchasing and securing automobiles, dangerous weapons and ammunition to facilitate the escape of dangerous criminals, and to be used in the commission of a heinous crime where four individuals lost their lives in Yuma County. Also, these weapons were used in the commission of a crime where two individuals lost their lives in Colorado. The same weapons were used to shoot at the Pinal County Deputies when the Road Blocks were set up to facilitate their apprehension. The same weapons were also used to commit an Armed Robbery on the victims prior to their murder. This defendant also had knowledge that his father, Gary Tison, who he helped escape from the Arizona State Prison, had previously escaped from this institution and in the commission of that escape murdered a prison guard.

#### MITIGATING CIRCUMSTANCES:

This defendant's age is definitely a mitigating circumstance. The defendant up to the escape had no serious criminal record to speak of. The defendant did cooperate with officers of the Court and officers investigating the cases to some extent. Although, this was only done after his capture. The defendant did cooperate with this interviewing Officer, at least he did talk to me, and gave me his side of the incident, not necessarily the situation involving the Lyons and Tyson girl, but he did give me a good insight into his background, and many of his thoughts and philosophies.

## RECOMMENDATION:

It is surprising how similar this defendant's statement is, with the statement that his brother, Ricky Tison, gave to the Pinal County Probation Officer. This defendant admits that the whole idea of breaking the father, Gary Tison, out of the Arizona State Penitentiary, was all an individual situation. It appears that this defendant at no time was cohered as far as co-defendants, trying to get him to involve himself. Again, this defendant stated that at any time he could have left the group and would not have received no repercussion from this move.

The defendant admits that he knew that there possibly could have been killings involved after the escape, due to the fact that he knew that his father was in for killing of a prison guard.

This Officer feels that this defendant did not actively participate in the murder of the Lyons Family and Teresa Tyson, except he drove them to the scene. As far as I can determine he did everything but point the gun and pull the trigger.

After a complete review of the entire report, I am torn between recommending the maximum or lighter sentence. Therefore, no recommendation will be made by this Officer.

Respectfully submitted,

/s/ Carl B. Cansler, Jr.  
CARL B. CANSLER, JR.  
Chief Adult Probation Officer  
Superior Court Division Three  
Yuma County, Yuma, Arizona



COURT REPORTER TAKEN FROM THE PINAL COUNTY FLEET WITH THE EXCEPTION OF OFFENSE.

STATE OF ARIZONA  
COUNTY OF YUMA

ADULT PROBATION DEPARTMENT

CASE NO.: 9299

|                                                                                                                                                      |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>DEFENDANT:</b><br><b>YISON, Ricky</b>                                                                                                             |                                                                          | <b>MIDDLE NAME:</b><br><b>Wayne</b>                                                                                                                                     |                                                                                                                                                                                                                  |
| <b>RESIDENCE:</b><br>2221 N. 61st Drive Phoenix, AZ.                                                                                                 |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
| <b>MAILING ADDRESS:</b> Arizona State Prison<br>P.O. Box 629 Florence, AZ. 85232                                                                     |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
| <b>FACE:</b>                                                                                                                                         |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
| White <input checked="" type="checkbox"/> Am. Indian<br>Black<br>Mexican<br>Oriental                                                                 | Single<br>Religious Affiliation: NONE<br>Driver's License: N/A (UNKNOWN) | Birthplace: Casa Grande, AZ<br>Education: 9 grades<br>I.D. Marks (last, tallest): Scars; left deltoid and left forearm                                                  | None <input checked="" type="checkbox"/> Male <input type="checkbox"/> Female<br>Date of Birth: 12/07/58<br>Age: 20 yrs.<br>Citizenship: U.S.<br>Eyes: Blue<br>Hair: Brown<br>Height: 5' 11"<br>Weight: 170 lbs. |
| <b>Place U for use and A for abuse:</b>                                                                                                              |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
| Marijuana <input checked="" type="checkbox"/><br>Heroin<br>Cocaine<br>Other                                                                          | Alcohol<br>Specify                                                       | Treatment Program Name: UNKNOWN<br>Currently enrolled: <input type="checkbox"/><br>Previously enrolled: <input type="checkbox"/><br>Completed: <input type="checkbox"/> |                                                                                                                                                                                                                  |
| <b>SOCIAL SECURITY NO:</b><br>UNKNOWN                                                                                                                | <b>UNION:</b><br>UNKNOWN                                                 | <b>CLASSIFICATION:</b><br>unskilled <input checked="" type="checkbox"/><br>semi-skilled<br>skilled<br>white collar<br>professional                                      | <b>ENTRY DATE:</b><br>N/A<br><b>DISCHARGE DATE:</b><br>N/A                                                                                                                                                       |
| <b>EMPLOYMENT:</b><br>employed <input checked="" type="checkbox"/><br>unemployed<br>retired<br>military<br>student                                   | <b>RELATIONSHIP:</b><br>father<br>mother<br>brother<br>brother           | <b>AGE:</b><br>UNKNOWN<br>39<br>UNKNOWN<br>19                                                                                                                           | <b>PHONE NUMBER:</b><br>247-1194<br>247-1194                                                                                                                                                                     |
| <b>RELATIVES NAME:</b><br>Mary Tison<br>Dorothy Tison<br>Ronald Tison<br>Raymond C. Tison                                                            |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
| <b>ADDRESS:</b><br>Deceased; 1978.<br>2221 N. 61st Dr. Phoenix, Arizona<br>Deceased; 1978<br>2221 N. 61st Dr. Phoenix, Arizona                       |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
| <b>ARRESTING AGENCY:</b><br>Yuma County Sheriff's Department                                                                                         |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
| <b>DATE OF ARREST:</b><br>8/11-78<br><b>STATUS:</b><br>OR <input type="checkbox"/> JAIL <input checked="" type="checkbox"/> BOND \$                  |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
| <b>DATE OF INDICTMENT FILED:</b><br>8/17-78<br><b>DATE OF INCARCERATION:</b><br>8/11-78<br><b>DATE OF RELEASE:</b><br>228 days to date of sentencing |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
| <b>PROSECUTOR:</b><br>Mike Irwin                                                                                                                     |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
| <b>NO. PRIOR INCARCERATION:</b><br>prison 0<br>jail 0<br>other 0<br>Specify                                                                          |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
| <b>NO. PRIOR SUPERVISION:</b><br>probation 1<br>parole 0<br>Specify                                                                                  |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
| <b>CO-DEFENDANTS:</b><br>Randy Greenwalt<br>Raymond Tison                                                                                            |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
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| <b>CO-DEFENDANTS:</b><br>Randy Greenwalt<br>Raymond Tison                                                                                            |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |
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| <b>DATE:</b><br>2/27-79<br><b>CAUSE NO:</b><br>9299                                                                                                  |                                                                          |                                                                                                                                                                         |                                                                                                                                                                                                                  |

**PRESENTENCE REPORT**

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Case No. : 9299

STATE OF ARIZONA, PLAINTIFF

*vs.*

TISON, RICKY WAYNE, DEFENDANT

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OFFENSE: Four (4) Counts of First Degree Murder;  
Three (3) Counts of Kidnapping; Two (2) Counts  
Armed Robbery; One (1) Count Grand Theft Auto,  
FELONIES.

PENALTY: § 13-451, § 13-452 as amended, § 13-453 as  
amended. § 13-492 (AC) as amended. § 13-641 and § 13-  
643, as amended. § 13 672, as amended.

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Judge: The Honorable D.W. Keddie  
Division Three

Date: March 6, 1979

Address: Arizona State Prison  
Florence, Arizona 85232

Ethnic: Caucasian

Alias: None

Prosecutor: Michael Irwin

Age: 20 (DOB: 12/07/58)

Attorney: Michael Beers

FBI No.: 598-684-T8

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## STATEMENT OF OFFENSE:

On August 9, 1978, a Warrant was issued for the arrest of this defendant, Ricky Wayne Tison, charging him with Three (3) Counts of Murder in the First Degree; Three (3) Counts of Kidnapping; Two (2) Counts of Armed Robbery and One (1) Count of Theft of a Motor Vehicle. On August 17, 1978, and after the recovery of a Fourth (4th) victims body, the entire case was presented to the Yuma County Grand Jury and a Fourth (4th) Count of Murder in the First Degree was added to the original charges. The charges were then Four (4) Counts of Murder in the First Degree; Three (3) Counts of Kidnapping; Two (2) Counts of Armed Robbery and One (1) Count of Theft of a Motor Vehicle. On August 11, 1978, this Defendant, Ricky Wayne Tison, with two (2) co-defendants, were arrested by Arizona Law Enforcement Officers in Pinal County, Arizona. These co-defendants being Raymond Tison, and Randy Greenawalt. Two (2) additional co-defendants, Donald Joe Tison, who was killed during an exchange of gun fire with officers at the time of arrest, and Gary Tison, whose body was found eleven (11) days later a short distance away, having died of heat exposure.

On February 27, 1979, the defendant, Ricky Wayne Tison, was found guilty by a Yuma County Jury on all counts as charged on the Indictment.

## OFFICERS VERSION OF OFFENSE:

The circumstances surrounding this case are taken from the Yuma County Sheriff's report #R-10755-78; Medical Examiner Reports, J78-75/5265, J78-72/5262, J78-71/5261 and J78-70/5260; Numerous FBI Laboratory Reports; Arizona Criminal Investigation Team Reports and Summaries; Pinal County Sheriff's Report #78-45861 and the Defendant's Statements.

These circumstances are as follows; Sometime on or about August 1, 1978, the victims in this case, John

Lyons, age 24; his wife, Donnelda Lyons, age 23; their child, Christopher Lyons, age 22 months and his Niece, Teresa Tyson, age 15 years, left the Yuma area on a vacation. They were driving a 1977 Mazda automobile belonging to the Lyons Family. On August 6, 1978, at approximately 4:00 p.m., a Arizona Fish and Game Officer found the Lyons Family shot to death in and around a 1969 Lincoln automobile. A search of the area failed to locate the 15 year old niece, Teresa Tyson. The car and bodies of the Lyons Family were found .7 of a mile from Highway 95 at approximately Milepost 84-1. John Lyons body was found approximately 25 feet to the rear of the car. The Autopsy Report show he received shotgun wounds in both wrists; shotgun wound to back of left shoulder, shot at close range; shotgun wound of right abdomen and chest; shotgun wound at close range left rear of the skull; and shotgun wound of left upper chest. Cause of death listed as shotgun wounds of head and chest.

The body of Donnelda Lyons was found in the back seat of the Lincoln automobile slumped over in the seat holding her 22 month old son, Christopher. The Autopsy Reports state she received a close range shotgun wound at the left rear of her skull; a close range shotgun wound of the right chest and a shotgun wound of the left chest. Cause of death listed as shotgun wound of head and chest.

The body of Christopher Lyons was found with his mother in the back seat of the Lincoln automobile, where he was in his mother's arms. The Autopsy Report show he received gunshot wound on the whole left side of his head. The cause of death is listed as shotgun wound to the head.

At the scene of the Murder, officers recovered thirteen (13) spent 16 gauge shotgun shells, five (5) spent 20 gauge shotgun shells and two (2) spent .45 caliber cases.

Through investigative leads, the officers, found that Gary Tison, Donald Tison, Ricky Tison, Raymond Tison and Randy Greenawalt were suspected of committing these

Homicides. Due to the fact that Teresa Tysons body had not been found, it was thought the five had taken her as a hostage.

On August 11, 1978, after Ricky Tison, Raymond Tison and Randy Greenawalt were captured at the Pinal County Road Block, an interview followed, one of them (unknown to this interviewer) told where Teresa Tysons body might be located. A search of the area was again conducted and Teresa Tyson's body along with the Lyons dog, was found .2 mile from the location of the Lincoln automobile, where the Lyons bodies had been found earlier. It appeared that she was trying to reach Highway 95, as she had traveled in that direction.

The Autopsy Report show Teresa Tyson received a shotgun wound to the right hip and apparently bled to death, but as the report states because of the extensive decomposition they were unable to determine if there were other wounds. The cause of death is listed as a shotgun to the right hip.

On August 11, 1978, the Lyons Family automobile that had been stolen, after their Murder, was found hidden near Flagstaff, Arizona. On August 17, 1978, the Arizona State Crime Laboratory identified one (1) finger print belonging to Ricky Tison, two (2) finger prints belonging to Donald Tison and one (1) finger print belonging to Randy Greenawalt in the Mazda car. When the car was recovered it was found that both front seats, and the radio were missing. The car had been repainted to a gray color and the license plates were missing.

A Time Chart furnished with the reports, indicate that the three (3) surviving Defendants in this case had been involved in the following crimes: On July 30, 1978, the Tisons had effected an Escape of their father, Gary Tison, and Randy Greenawalt from the Arizona State Prison with the use of loaded firearms. The above mentioned Defendants, murdered the John Lyons Family and their Niece, Teresa Tyson, as well as robbing them and stealing their automobile; In the State of Colorado, the De-

fendants, Murdered, Robbed and stole the car of James and Margene Judge; The Defendants on August 11, 1978, ran two Road Blocks in Pinal County, shooting at the deputies who were trying to stop and arrest them, resulting in the gunshot death of one of the co-defendants, Donald Tison, and the subsequent death of co-defendant, Gary Tison, whose body was found August 22, 1978, in the desert area near the road block where he escaped. All of these crimes occurred within thirteen (13) days, coming to the conclusion, at the time of their arrest on August 11, 1978.

At the time of their arrest, the defendant and co-defendants had the following weapons in their possession:

1. Dakota .45 caliber Revolver, serial #52941 bought by Dorothy Tison on May 20, 1978, from a gun dealer in Casa Grande, Arizona, who was a friend of Ricky Tison.
2. 1-Smith and Wesson .357 Magnum Revolver serial #S164017.
3. 1-Colt caliber .38 Automatic, serial #J357096, which was in the possession of Donald Tison when he was killed at the Road Block.
4. 1-Erma-Werke .380 caliber Automatic serial #105020.
5. 1-Colt .45 caliber Automatic serial #322515. This weapon was found under the body of Gary Tison upon discovery of his body.
6. 1-Rohm .22 caliber Magnum Revolver serial #1L8284, this weapon had an extra cylinder.
7. 1-Winchester Model 70 caliber .264 Magnum Rifle serial #29148.
8. 1-Forehand Arms 12 gauge shotgun serial #50081, the barrel of this weapon had been sawed off.



9. 1-Beretta 12 gauge shotgun serial #CC4268 stock and barrel of this weapon had been sawed off.
10. 1-Browning 16 gauge shotgun serial #8513067 barrel of this weapon had been sawed off.
11. 1-Master Magnum 20 gauge shotgun serial #G860854.

From information gathered on the above weapons, the .380 Automatic was owned by a business partner of the man that sold Mrs. Tison the .45 caliber Revolver. When the man was questioned about who he sold the Automatic to, he said he sold the Automatic to an unknown subject in a bar, in 1976.

Raymond Tison asked a machinist who worked for the same company as he did, the Gilbert Pump Works, if he would "turn down" a shotgun barrel for him, Mr. Taylor refused. This was before the escape from the Arizona State Prison.

Through witness statements present during the escape from the Arizona State Prison, Gary Tison was armed with a .38 caliber Revolver with a silencer attached; Randy Greenawalt was armed with a shotgun; Donald Tison was armed with a shotgun; Raymond Tison was armed with a shotgun and Ricky Tison was armed with a shotgun.

Through information gathered from the FBI report of the thirteen (13) 16 gauge shotgun shells found at the scene of the Lyons Family and Teresa Tyson Murder all but one (1) has been identified as being fired from the Browning 16 gauge shotgun serial #8513067. Of the five 20 gauge shotgun shells found at the Lyons-Tyson Murder Scene all five have been identified as being fired from a Master-Magnum 20 gauge shotgun serial #G860854.

For a more detailed account of the circumstances involving this case, all reports will be in possession of the interviewing officer for reference by Your Honor upon request.

#### DEFENDANT'S STATEMENT:

On February 27, 1979, this officer took a Presentence Interview Form to the Yuma County Jail for the defendant, Ricky Wayne Tison, to fill out. Attached to this form was a note written by this officer informing the defendant, Ricky Tison, that this was required for his Presentence Report and that this officer would pick up the completed form on Monday, March 5, 1979. On March 5, 1979, this officer went to the Yuma County Jail contacted the jailer in regards to recovery of the form the defendant, Ricky Tison, so that preliminary work could be started on the Presentence Report. At that time I was informed by the Jailer, and handed back the form along with the attached note that the defendant, Ricky Tison, did not wish to talk to this officer until he could confer with his attorney. On March 6, 1979, this officer went to the Yuma County Jail at approximately 2:30 p.m., with the intent of hopefully obtaining a verbal interview with the defendant, Ricky Tison, regarding this offense. Again, this officer was informed by the Jailer that Ricky Tison would not talk to this officer until he contacted his attorney, who had moved and Ricky did not know where he had moved nor his telephone number. Therefore, Ricky Tison advised the Jailer to inform this officer that when he contacted his attorney he would then see about submitting an interview with this officer.

Attached is the Oral Statement made by Ricky Tison on January 26, 1979, in Pinal County.

It is this officers understanding that there are additional statements given by Ricky Tison to which the judge is aware of, which this officer does not have access to.

#### CO-DEFENDANTS:

Randy Greenawalt, age 29, awaiting sentence on the charges of, Four (4) Counts of First Degree Murder;

Three (3) Counts of Kidnapping; Two (2) Counts of Armed Robbery and One (1) Count of Grand Theft Auto.

Raymond Curtis Tison, age 19, awaiting sentence on the charges of, Four (4) Counts of First Degree Murder; Three (3) Counts of Kidnapping; Two (2) Counts of Armed Robbery and One (1) Count of Grand Theft Auto.

#### OTHER PENDING CHARGES:

Charges of Two (2) Counts of Murder in the First Degree; Two (2) Counts of Kidnapping in the First Degree; and Two (2) Counts of Conspiracy; have been filed in Rio Grande County, Del Norte, Colorado, on November 6, 1978, in the Murder of James and Margene Judge, Trial date is unknown.

The above charges have also been filed against the two (2) co-defendants in this case.

#### PRIOR RECORD:

**JUVENILE:** Due to the fact that this officer could not get any information on this defendant's past criminal record from the defendant, there is no information regarding his juvenile arrest.

**ADULT FELONY:** This information is taken from the Pinal County Presentence Report, it states the following:

On April 5, 1978, the defendant was arrested in Casa Grande, Arizona for Burglary. Through a Plea Agreement this defendant plead guilty to Petty Theft on April 10, 1978, and received a six (6) months suspended sentence in the Casa Grande Justice Court. As a condition of his probation, the defendant was ordered to pay \$16.30 restitution and to clean six (6) miles of the Gila Bend Highway.

In Pinal County, the defendant was charged with the following crimes; Thirteen (13) Counts of Assault of a

Deadly Weapon; One (1) Count of Aiding and Abetting an Escape; One (1) Count of Taking Prohibited Articles into the Arizona State Prison; Four (4) Counts of Assault with a Deadly Weapon; One (1) Count of Possession of a Stolen Motor Vehicle; One (1) Count of Fleeing or Attempting to Elude a Pursuing Law Enforcement Vehicle. After being found guilty by a Jury Trial in Pinal County of the above charges, the defendant received the following sentence; Two (2) sentence to thirty (30) years to Life to date from August 11, 1978; Four (4) sentences of Four (4) to Five (5) years in the Arizona State Prison be served consecutively with the life sentences.

Attached you will find a FBI No Prior Report, dated August 13, 1978. It appears that the time the Yuma County Sheriff's Department sent in the finger prints on this defendant the charges involving the Pinal County crimes had not yet reached their files.

#### SOCIAL HISTORY:

The following information is taken from the Pinal County Presentence Report, which is a combination of information of both, Ricky Wayne Tison and Raymond Curtis Tison. It is as follows:

The defendant was born on December 7, 1958, in Casa Grande, Arizona. His father being Gary Gene Tison, deceased, having died in 1978, and his mother being Dorothy Tison, age 39.

From this marriage there was three children born, with the defendant being the middle child, having two brothers, Donald Joe Tison, who was killed in a Road Block on August 11, 1978, at the age of 20, and Raymond Curtis Tison, age 19, co-defendant, awaiting sentence on these offenses.

The defendant claims a stable, happy home life with his parents and brothers when the family resided in a



farm near Casa Grande, Arizona. They resided on the farm until his father's commitment to the Arizona State Prison when the defendant was approximately six or seven years of age. In 1967, the mother and children moved into the city limits of Casa Grande, residing there briefly before moving to Wilmington, California. Family was residing in Casa Grande when the father escaped from the Arizona State Prison, taking a guard hostage and killed him. After the father's trial and sentence to life imprisonment, the family moved to California, and remained there for about one year. In 1968, the family moved to Phoenix, and established residency.

The defendant stated that he was especially close to his maternal grandparents who had a significant bearing on them, him and his brothers, upbringing in the Casa Grande area while their mother was working and the father was in the Arizona State Prison. He described the family as being a tight close-knit family, stating he had many friends in the Casa Grande area as he always returned to the area to live with the grandparents during the summer months vacations. The defendant stated the mother decided to move to California in 1967, because the family became *personae non gratae* after the father's escape from prison which involved the killing of a prison guard and a shootout with the Casa Grande Officers.

#### MARITAL HISTORY:

The defendant is single, has never been married, has no offspring.

#### PRESENT PHYSICAL & INTERPERSONAL ENVIRONMENT:

At the present time the defendant is serving time at the Arizona State Prison, thirty (30) years to life, as a result of he and his brother's engineering the escape of Gary Tison and Randy Greenawalt from the Arizona State Prison, in Pinal County.

Prior to his commitment, it appears that the defendant resided with his mother in the Casa Grande, California and Phoenix areas. Over the past five years the defendant spent considerable time in the Casa Grande area with his aunt and grandparents. Although, his permanent residence was with his mother in the Maryvale area of Phoenix, Arizona.

#### EDUCATION:

The defendant completed the ninth grade of school in Phoenix, Arizona. He dropped out of the tenth grade after attending classes for approximately two weeks at Maryvale High School because he disliked going to school. The defendant related that he lost interest in school and began ditching classes when he was in the eighth grade.

#### RELIGION:

The defendant indicated no religious preference or affiliation. He related that he attended church with his grandmother as a youngster in Casa Grande, Arizona.

#### INTEREST & LEISURE TIME ACTIVITIES:

The defendant stated that in his leisure time he enjoys woodworking and exploring or "tinkering" with mechanical and electrical equipment.

#### PHYSICAL HEALTH:

The defendant stated that he is in good health, he occasionally is bothered with stomach ulcers, but suffers from no other physical disabilities, or medical problems.

#### MENTAL & EMOTIONAL HEALTH:

The Pinal County has ordered a full-scale Psychological Evaluations on this defendant. This report is attached to this Presentence Report.

**SUBSTANCE USE OR ABUSE:**

This officer found no information under this subject in the Pinal County Presentence Report.

**EMPLOYMENT HISTORY:**

For a one month period in the Spring of 1978, the defendant was employed as a combine driver with Baker's Custom Harvesting, Casa Grande, Arizona. Prior to that the defendant worked intermittently as a roofer's helper at Bud Howe Roofing, Casa Grande, Arizona. He also worked as a gas station attendant.

**MILITARY HISTORY:**

NONE.

**FINANCIAL CONDITION:**

It appears that this defendant has no significant financial assets or liabilities at this time.

**REFERENCES:**

Attached is a letter addressed to the Honorable Douglas W. Keddle, from a James E. Collins, Jr., regarding character references for both, Ricky Tison and Raymond Tison.

**SUMMARY AND EVALUATION:**

This entire crime spree started with the defendant, Ricky Tison, and his brother, Raymond Tison, planning and obtaining weapons and then committing the Escape of two (2) known dangerous criminals from the Arizona State Prison. Both prisoners, Gary Tison, father of the defendant, and Randy Greenawalt, were Murderers. It was known by this defendant that his father, Gary Tison, had killed a prison guard in his last escape from the prison. This officer feels they also had knowledge of the

dangerousness of Randy Greenawalt, due to the amount of planning that went into this escape. It is felt that Gary Tison told them the entire background of Randy Greenawalt. During the escape they were armed with loaded weapons and it is felt that they would have been used if needed by all of the defendant's involved.

At the stopping of the Lyons vehicle, in Ricky Tison's statement, all were armed and helped in subduing the Lyons Family and Teresa Tyson. It is felt that when the victims were taken into the desert area these defendants knew full well of what was to occur. It is true other than the defendant, Ricky Tison, saying that Randy Greenawalt and Gary Tison committed the Murders, just who pulled the triggers is unknown. This defendant, Ricky Tison, could just have well committed the Murders or a Murder as any of the other co-defendants. It is known of two statements that Ricky Tison has given and he has told a different story in both. The one given on January 26, 1979, pretty well coincided with all of the reports that have been submitted and read up to this point. It appears through the report reviews that the defendant, Ricky Wayne Tison, was the leader of the outside planning and the assembly of the equipment to be used for the escape, which touched off the heinous crimes that were committed in a short period of time that all five (5) were free.

It is felt that after the Lyons Murder and Teresa Tyson's Murder, anytime this defendant, Ricky Tison, if he had so opposed to the Murder of the victims, could have gotten away from his father. Although, he implies that his father had complete control over all circumstances. It is found on several occasions that the father left, if what Ricky Tison says is true, he and his brothers alone where escape could have been possible and even in getting away from the dangerous individuals that they supposedly at this time knew that Gary Tison and Randy Greenawalt were.



### AGGRAVATING CIRCUMSTANCES:

Through a review of the reports and of the statements of this defendant, Ricky Wayne Tison, this officer finds the following aggravating circumstances to apply; This defendant, Ricky Wayne Tison, literally broke in to a Maximum Security Prison in possession of loaded firearms and effected the escape of two dangerous Murderers. From all outward appearances this defendant was the leader and person most responsible for the gathering of the equipment to be used. This equipment being dangerous weapons and ammunition to facilitate the escape of dangerous criminals and to be used in the commission of a heinous crime, in which four (4) individuals lost their lives in the Yuma area, and two (2) individuals lost their lives in Colorado.

The same weapons were used to shoot at the Pinal County Deputies when the Road Block was set up to facilitate their apprehension. This defendant was involved in the armed robbery taking property from the victims prior to their Murders.

This defendant had knowledge that his father, Gary Tison, whom he was going to help escape from the Arizona State Prison, had committed a Murder in a previous escape from that institution.

This defendant appears to show no remorse over the deaths which he was instrumental in the commission of, if not possibly committing himself.

### MITIGATING CIRCUMSTANCES:

The defendant's age is a mitigating circumstance regarding this situation.

The defendant up to this point did not have a serious past criminal record that can be verified. This defendant did cooperate with officers of the Court to some extent, but this was only done after his capture and then it was not to a full extent. This defendant gave a full statement to the Yuma County Attorney and asked for a Plea

Agreement, in which the death penalty would not be asked. The defendant then withdrew this Plea Agreement.

### RECOMMENDATION:

In the statement given to the Pinal County Deputies on August 11, 1978, by this defendant, Ricky Wayne Tison, there is one sentence in this statement which states, "The whole idea of breaking the old man out of jail was ours. Just pulling a spree."

In Ricky Tison's statement of facts in the Pinal County Presentence Report, he also states in the last paragraph that he certainly will escape should the opportunity arise. He remarked, "My old man always taught me that you never run from anything you attack."

After a complete review of the entire report, I am torn between recommending the maximum or a lighter sentence. Therefore, no recommendation will be made by this Officer.

Respectfully submitted,

/s/ Carl B. Cansler, Jr.  
CARL B. CANSLER, JR.  
Chief Adult Probation Officer  
Superior Court Division Three  
Yuma County, Yuma, Arizona

## DEFENDANT'S STATEMENT:

It should be noted that on January 26, 1979, Ricky Wayne Tison and Raymond Curtis Tison appeared before Judge E.D. McBride in Pinal County, Florence, Arizona. The defendant, Ricky Wayne Tison, and co-defendant, Raymond Curtis Tison, entered into a Plea Agreement pleading guilty to First Degree Murder of John Lyons. Lyons was murdered on August 1, 1978, in Yuma County. The Honorable E.D. McBride set the date of sentencing for February 19, 1979.

As a result of the Plea Agreement, the defendant Ricky Tison gave an oral statement on January 26, 1979, in the presence of Investigator, Tom Brawley, the defendant's attorney, Michael Beers and Yuma County Attorney, Michael Irwin. The statement is as follows:

Ricky Wayne Tison advised that he, Raymond Tison, Donald Tison, Gary Tison and Randy Greenawalt departed the Arizona State Prison on the morning of July 31, 1978. He stated that they left the Prison in a Ford Galaxy owned by his mother, Dorothy Tison. He advised that they drove to the Pinal County Hospital where they parked the Galaxy and picked up a white Lincoln, four door, bearing New Mexico license plates. Ricky Tison stated that they left the hospital in the Lincoln with Donny Tison driving. He advised that they went on several back roads; that they had planned on using Hunt Highway, but after that he indicated that they had no plans. Ricky Tison advised that they went to the far south side of Phoenix and turned south and went through a small town which he does not recall the name of. He advised they then traveled for a long distance on a dirt road where they eventually came to an old abandoned house. He described the house as a wooden framed house located in the desert. He stated it appeared that fields used to be around the house, however, they had not been cultivated recently. Ricky Tison indicated that they stayed at this house. He thought for two nights, however,

he was not sure. He advised that while driving the road, he did see a sign that stated "Entering Maricopa County".

Ricky Tison stated that while at the house they had a flat tire on the Lincoln. They changed the tire and used the spare. He stated that shortly after dark they left the abandoned house and continued down the long dirt road until they came to a highway which, according to Ricky his father called the "Truck Highway". Ricky Tison advised that they turned right unto the highway and went down it for some distance when they had a second flat on the Lincoln. He stated that they stopped the car and cut the thread off the tire and tried to continue driving. He advised that Randy Greenawalt was driving at the time and that they drove a short distance and then determined that they could drive no further on the flat. Ricky Tison advised that at that point they decided that they would flag down a car and take the car from the owners when it stopped.

Ricky Tison stated that at this time, they had the following weapons: Three (3) shotguns which were used at the prison; a .38 automatic with silencer and a .45 Colt. He advised that they put the emergency flashers on the Lincoln. He said that Raymond Tison stayed with the Lincoln to flag down a vehicle. He advised that they all had weapons at that time except for Raymond Tison. He advised that his dad had the 16 gauge shotgun; Randy Greenawalt had a 20 gauge shotgun; Donald Tison had a weapon, but he does not know which weapon and he had a .45 revolver. He advised that Gary Tison and Randy Greenawalt hid on the left side of the road, he and Donny hid on the right side of the road.

Ricky Tison advised that it was after dark at this time and that a car came by. He stated Raymond Tison flagged the car down but it kept going. He stated that a short time later a second car came by and Raymond Tison attempted to flag it down. He advised that the car continued past the Lincoln and then turned around returning to the Lincoln where it again turned and parked directly behind the Lincoln.



He advised that Mr Lyons and his wife walked up to Raymond Tison. He advised that while they were talking to Raymond Tison, he, Donald Tison, Gary Tison and Randy Greenawalt came up to the side of the Mazda and that they all had their weapons out and pointed at the Mazda.

He stated that Mrs. Lyons left Mr. Lyons and started walking back to the Mazda because she wanted her baby. He advised that at that time his dad, Gary Tison, pointed a shotgun at her. She told Gary Tison she wanted to get her baby and continued to the Mazda. He stated that Teresa Tyson was in the passengers side of the Mazda.

He advised that his father told the Lyons that they wanted the car. He said that he remembered Mrs. Lyons walking up to the Lincoln carrying her baby and he recalled Teresa Tyson getting out of the Mazda. He advised that the Lyons and Teresa Tyson were then placed at gun point in the back of the Lincoln. He said that Raymond Tison and Donald Tison were in the Lincoln and that he, Gary Tison and Randy Greenawalt got in the Mazda. He said that they turned left onto the dirt road which he thinks was a gas line road, a short distance where they stopped. He advised they then parked the Lincoln and the Mazda together and started switching supplies. They took water, blankets, clothing, gasoline from the Lincoln and put it in the Mazda and they took the Lyons property from the Mazda and put it in the Lincoln. He advised that they searched the Mazda and obtained a 45 automatic and a .38 from it. They also removed the wallets, purses and I.D. from the Mazda. Ricky Tison advised that he found these items and did observe their names from the I.D.'s. He advised that his father told him to dump all of the contents of the purses and the wallet into one purse and they would take them. He further stated that during the time they were switching the items from the two vehicles, the Lyons family and Teresa Tyson were standing in front of the Mazda in the headlights. He advised that at one time Donny was watching them and he

does not recall who else may have controlled them while they were in front of the car.

Ricky Tison stated that after unloading the vehicles, his father walked into the desert and then told Donny to back the Lincoln into some trees. He states that Donny backed the Lincoln into the trees and that his dad then stood in front of the Lincoln and shot it several times with a shotgun. Gary Tison then made a statement, "It sure takes a lot to kill a Lincoln." Ricky Tison advised that the Lyons and Teresa Tyson were then taken to the Lincoln. He advised that they all escorted them to the Lincoln and placed them in the car. He advised that during this time, Mr. Lyons asked them not to kill them. He said something that Ricky recalled as "Jesus, don't kill me." He advised that the women were very calm and Teresa Tyson carried a dog with her to the Lincoln.

After they were all in the Lincoln, Ricky Tison stated that his dad told them to go back to the Mazda and get water. He stated that Donny went to the Mazda and he and Raymond stayed at the Lincoln. He said that his dad was very upset and that he yelled back to Donny, "Where is that water?" He stated that right after this he and Raymond went to the Mazda to get water. Ricky Tison stated that he brought water back and his dad took a drink. He said he and Raymond Tison were near the Lincoln, but his dad and Randy Greenawalt walked to the Lincoln. He advised that he saw both Randy Greenawalt and Gary Tison raise their guns and start shooting. He advised that his dad was on the passenger side of the Lincoln and Randy Greenawalt was on the driver's side of the Lincoln. He stated that both were shooting at the same time. He does not recall how many shots were fired. He advised that he observed both Randy Greenawalt and his father shooting at the Lincoln. It was his impression that both the front and back doors to the Lincoln were closed at that time.

He advised that Randy Greenawalt then returned to the Mazda and he could see his father still at the Lincoln

shooting. Ricky Tison advised that he did not know if Teresa Tyson got away from the car and he did not know that John Lyons was found outside the car. It was his impression that they were still inside the Lincoln at the time they left the area.

Ricky Tison stated that his father, Gary Tison, later told him that Randy Greenawalt was the one who wanted to shoot the people and he wanted to do it real bad.

Ricky Tison advised that they then got into the Mazda and drove all night. He said they set up camp at Sherwood Forest near Williams. He said that while at this camp, they went through the purse and threw it into a pond. Ricky Tison advised that they were near his uncle's house. He stated that they did not go to the house, but they got near the house and watched it for awhile. He was referring to Larry Tison's house in Sherwood Forest Estates near Williams. He advised that they then went out into a flat where they set up camp. He advised that the pond that they threw the I.D.'s of the Lyons and Teresa Tyson into was a pond that they used to swim in when they were kids. He stated that Donny Tison and Raymond Tison, driving the Mazda went into Williams where they bought groceries and primer paint to paint the Mazda with. He advised that the primer paint was burned at the campsite. He also stated that they spent the night in an old sheep herder's cabin near Sherwood Forest Estates.

Ricky Tison stated that the following day, they took the back roads in the Mazda; crossed the Interstate and went up north to Flagstaff where they made camp. He advised that while they were at the camp, Randy Greenawalt and Donny Tison met with Kathy Ehrmentraut. He advised that he, Donny Tison and Randy Greenawalt went to a small store in the area where they purchased groceries. He said Randy Greenawalt stayed at the Mazda while he and Raymond Tison went into the store. He stated that he never met Kathy Ehrmentraut that every time Randy Greenawalt left camp, Donny Tison went with him. He

advised that while camped near Flagstaff, they obtained a pickup and additional weapons and ammunition from Kathy Ehrmentraut. He advised that after they got the pickup they went a short distance from the campsite and dug holes for the tires and put the Mazda in the holes. They covered the Mazda with trees. He said that they took the seats out of the Mazda and put them in the back of the pickup. He advised that they cut the seat belts out of the Mazda to be used as straps to tie things down with and they also took the radio. They dumped the Mazda seats before they got the van.

Ricky Tison stated that at the time of the escape, it was planned that Randy Greenawalt would go with them because Randy Greenawalt worked in the control room and Gary Tison told them that they needed Randy Greenawalt. Ricky Tison advised that it was he who cut down the shotguns and he made an ejector for the .380. He advised that when they went to the Prison, that morning they dropped Raymond Tison off and thirty minutes later he and Donld Tison came back and honked the horn. The horn was a signal to let Gary Tison and Randy Greenawalt and Raymond Tison know that they were coming into the control room. He advised that while they stayed at the abandoned house, they could see helicopters flying in the mountains. He stated that the house had a metal shed and an old fence and that he could see some farm houses approximately one mile away. He further advised that while they were on the loose, his father was running things, however, there were no arguments between his father, Randy Greenawalt or anyone else. He advised that Randy Greenawalt was not threatened in anyway and that a week prior to the escape, his father had told him that Randy Greenawalt wanted to escape and also that they needed Randy Greenawalt to help them.

Ricky Tison advised that when they came back into Arizona, their plans were to go to Mexico. He stated that he did not know exactly where they came into Arizona at, but they stayed on the freeway near Phoenix, Arizona,



and then went to Sunland Gin Road. He stated they were unaware of any road blocks until the police lights came on. He said Donny was driving at that time. Randy Greenawalt was sitting up front. He said his dad told Donny to slow down and then his dad said, "Run it." He said his dad had to tell Donny twice to run the road block. He advised that he observed Randy Greenawalt rapid firing a .357 magnum. He said his dad had a rifle at the time they ran the roadblock. He advised that his dad had to reload the rifle and apparently he jammed it. Gary Tison then told Randy Greenawalt to come into the back and Ricky Tison advised that he went to the front. He advised that when he went to the front there was still shooting out the back of the van. He advised that the lights came on the cars at the second roadblock and the cops started shooting. He advised that he ducked down and could not see anymore and they then went off the side of the road. He said after the van stopped, he went out the window and saw the rest running from the van. He said that Donny carried a .45 at first, but at the time they were caught, he had a .38; his father had the .45 and Raymond Tison kept the .380.

Ricky Tison stated that the escape had been planned for a long time. He advised that Gary Tison and Joe Tison made a deal for some of Joe's people to break Gary Tison out of Prison. In turn, Gary Tison would have some of his people kill a witness who was to testify against Joe Tison in a pending criminal case. Ricky Tison advised that Joe Tison purchased the Lincoln somewhere in New Mexico; that he used a phoney name when he purchased the Lincoln and that he was using the Lincoln to run narcotics with until the deal was made between him and Gary Tison. Ricky Tison stated that at that time, several months prior to the escape, Joe Tison gave the Lincoln to the three boys with the understanding that it was to be used for the escape.

Ricky Tison further advised that shortly after receiving the Lincoln from Joe Tison, Joe met with him and

Raymond Tison at the Six Pence Hotel in Phoenix where he delivered to them a 16 gauge shotgun and the .38 automatic. Ricky Tison advised that these weapons were given to him and Raymond Tison by Joe Tison for the purpose of using them during the prison escape. He further advised a few days later, he and Raymond met late one night in Florence Junction with Joe Tison and his wife and at that time were given a 12 gauge shotgun and a 20 gauge shotgun. Again, the understanding was that the weapons would be used for the purpose of breaking Gary Tison out of prison.

Ricky Tison stated that right after they received the Lincoln from Joe Tison, they took it to Bob Adams' house in Phoenix and that right after they received the weapons, they also were taken to Adams' house and placed in the Lincoln. He advised that all the camping equipment was bought prior to the escape by Donny Tison. Donny Tison purchased the equipment with money that he received when he was discharged from the Marine Corp. This equipment was also kept in the Lincoln at Bob Adams' house. He advised that the boys received no money from anyone to be used during the escape. He advised that there was only one silencer and he declined to say who made the silencer. He did state, however, that the .380 automatic came from Mr. Monahan in Phoenix. He advised that the radios taken from the prison were buried after they left Williams, Arizona. He advised that he did not know Richard Bilby and did not know the guns were furnished to Joe Tison by Richard Bilby. He advised that he and Raymond Tison told Bob Adams that the day before the escape that they were going to break Gary Tison out of prison. He advised that while they were loose, his dad did not talk much about Adams, but he did make a few phone calls and Ricky Tison thought one of them was to Bob Adams. He stated that no one else was supposed to have been broken out of prison except for Gary Tison and Randy Greenawalt.

He advised that it was not Chuck Whittington or anyone else at Gilbert Pump Company who cut the shotguns down, although they saw the shotguns. He advised that he himself cut them down. He also advised that after the homicides, they went to Williams to see if Larry Tison would help them, however, they made no personal contact with Larry, but it was possible that Gary Tison could have called Larry Tison on the phone. He advised that Randy Greenawalt and Donny Tison obtained a rifle and a .357 from Kathy Ehrmentraut in Flagstaff. He said that Gary Tison and Randy Greenawalt did quite a bit of talking about Ehrmentraut before they arrived in Flagstaff, Ricky Tison, at the request of Tom Brawley drew a very sketchy map showing Sherwood Forest, Larry Tison's house and the pond and the old sheep herder's cabin where they spent the night near Williams.

# ATTACHMENTS TO PRESENTENCE REPORT OF RAYMOND CURTIS TISON, CASE NO: 9299

1. FBI. Report.
2. Copy of his Statement given after his arrest on August 11, 1979.
3. Copy of his Statement given at the time they were going to enter into a Plea Agreement.
4. Copy of Time Flow Chart.
5. Copy of the Psychological Evaluation by James A. McDonald, PH.D., Clinical and Educational Psychology, for Defendant.
6. Copy of the Psychological Evaluation by James A. McDonald, PH.D., Clinical and Educational Psychology, for Dorothy C. Tison.



## SENTENCING TRANSCRIPT—MARCH 29, 1979

(Joint Sentencing of Raymond Curtis Tison  
and Ricky Wayne Tison)

[149] SENTENCING

THE COURT: Number 9299, the State of Arizona versus Ricky Wayne Tison and Raymond Curtis Tison. This matter comes on for pronouncement of judgment and sentence at this time. Before doing so it is necessary that I render a special verdict regarding aggravating and mitigating circumstances. Does the State have anything to add?

MR. IRWIN: Your Honor, the arguments and the position of the State as to the law that applies in this matter has been set forth in the memorandum which has previously been submitted to the Court. We have nothing to add to that at this time.

THE COURT: Mr. Beers, on behalf of the defendant Ricky Tison do you have anything to add?

MR. BEERS: Regarding the aggravating and mitigating circumstances my position is clearly laid out from the memorandum. I have nothing to add to that.

[150] THE COURT: Mr. Bagnall.

MR. BAGNALL: Since I adopted in principle all of the matters contained in the memorandum of Mr. Beers I merely concur in that and call the Court's attention to the memorandum which I submitted on the one question.

THE COURT: Yes, they have been fully considered. Did you want to make that other exhibit a part of the record?

MR. BEERS: Yes, Your Honor, I would. There is a copy of the presentence report prepared by Carl Cansler and I would like it marked.

THE COURT: And you wish it noted that specifically you object to those portions you have underlined in red?

MR. BEERS: Yes, Your Honor. I object to them and I think they are misinterpretation of the facts and I think it could have been cleared up had Mr. Cansler spoken directly to Ricky. He was advised that Ricky was willing to speak to him on March 15.

THE COURT: All right. Let the record note that the matters referred to are conclusions and simply interpretations made by the probation officer.

MR. BAGNALL: I would say one thing further, Your Honor, with respect to the report by the probation officer that reading into it it seems protagonistic towards the position taken by the county attorney.

[151] THE COURT: All right. Pursuant to A.R.S. Section 13-454 C in which the Court returns a special verdict of its findings of the existence or nonexistence of aggravating circumstances as set forth in 13-454 E and of any mitigating circumstances.

Respecting aggravating circumstances. The only information relevant to any of the aggravating circumstances set forth in section 13-454 E which has been considered by this Court in making these findings concerning aggravating circumstances as to each defendant is that received in evidence at his trial on the murder charges and that received in evidence on these charges at the sentencing hearing conducted March 14, 1979. And specifically in that regard presentence reports have not been considered in making these findings of aggravating circumstances.

The Court finds these aggravating circumstances are present:

In the commission of the murders of John Lyons and Donelda Lyons, the defendants knowingly created a grave risk of death to other persons in addition to those victims. The person or persons among the defendants who fired the fatal shots fired indiscriminately and excessively as evidenced by the number of spent shotgun shell casings found in the immediate vicinity of the Lincoln and the number of fatal wounds sustained by John

Lyons and Donnelda Lyons. The location of the fatal wounds of John Lyons and Donnelda Lyons, head and chest wounds, contrasted [152] with the fatal hip wound sustained by Teresa Tyson, is evidence that Teresa sustained that wound as a result of the indiscriminate shooting. The position of the body of Christopher Lyons standing between his mother's legs and his fatal head wound is consistent with finding his wound was incidental to his mother's fatal chest wound.

Two. The defendants committed the offenses as consideration for the receipt or in the expectation of the receipt of something of pecuniary value, namely, the taking of the automobile and other property of the victims John and Donnelda Lyons.

Three. The defendants committed the offenses in an especially heinous, cruel and depraved manner. This finding is based on the evidence that the victims' vehicle was stopped, they and their vehicle were moved from the highway into the desert, and some, if not all, of the victims, were placed in the Lincoln automobile where at least Donnelda Lyons and Christopher Lyons were murdered. Clearly the fatal wounds of John Lyons and Teresa Tyson were inflicted in or near the Lincoln. The conclusion is inescapable that all the victims were moved from the highway under force and, considering the arsenal possessed by the defendants and the manner in which the victims were killed, very probably at gunpoint. Necessarily John Lyons, Donnelda Lyons and Teresa Tyson had time to become and must have become apprehensive about their welfare and that of Christopher at first and ultimately about all their lives before the fatal shots were fired. The [153] stress and fear each must have initially experienced had to have grown to immence, almost unimaginable proportions before they were murdered. And it is not unreasonable to conclude that one or more of the victims witnessed the murder of the others before his or her turn came, and that very likely, from where they were found, Teresa Tyson and John Lyons were those witnesses. The emotions certainly ex-

perienced by John Lyons, Donnelda Lyons and Teresa Tyson in those last minutes of their lives were the equivalent of the severest physical torture.

This finding is also based on the senselessness of the murders. It was not essential to the defendants' continuing evasion of arrest that these persons were murdered. The victims could easily have been restrained sufficiently to permit the defendants to travel a long distance before the robberies, the kidnappings, and the theft were reported. And in any event the killing of Christopher Lyons, who could pose no conceivable threat to the defendants, by itself compels the conclusion that it was committed in a depraved manner.

Four. The defendants have not been convicted of another offense in the United States for which under Arizona law a sentence of life imprisonment or death was imposable which this Court can consider here. The related convictions in Pinal County in December, 1978, of each defendant of 17 counts of assault with a deadly weapon are not being ignored. Clearly they are crimes punishable by life imprisonment. However, if all of the [154] criminal acts of the defendants, commencing with the prison escape and ending with their apprehension, had been committed in one county of this State, very probably all of the charges would have been included in a single indictment or information. Had they been tried and convicted on all charges in one trial in that one county, would it be reasonable now to include the assault convictions as an aggravating circumstance? I think not, and I do not believe the legislature intended that result. The murder convictions were based in part on the murders occurring during the continuing efforts of the defendants to prevent lawful arrest and to aid the continuing escape of Gary Tison and Randy Greenawalt. Hence all convictions were a part of the escape and prevention of lawful arrest. In not including the assault convictions as an aggravating circumstance, I also note that the convictions in Pinal County occurred before the



murder convictions here simply because Pinal County trial was scheduled for an earlier date than the trial here.

Five. The defendants have not previously been convicted of a felony in the United States involving the use of threat or violence on another person which this Court can consider. Again the Pinal County convictions are noted and are not considered a previous conviction for the reasons above stated.

Six. The defendants did not procure the commission of the offenses by payment or promise of payment of anything of pecuniary value.

[155] Regarding mitigating circumstances, all information relevant to any mitigating circumstances, including but not limited to those set forth in 13-454 F, contained in the presentence report, presented at the sentencing hearing, received in evidence at the trials of the defendants and contained in transcribed statements taken January 26, 1979 and February 1, 1979 of each of the defendants has been considered by the Court. The Court finds none of the mitigating circumstances prescribed in 13-454 F are present, namely:

1. Neither defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired.

2. Neither defendant was under unusual and substantial duress.

3. Neither defendant's participation was relatively minor. Although each of the defendants has stated the murders were actually committed by Gary Tison and Randy Greenawalt, the participation of each in the crimes giving rise to the application of the felony murder rule in this case was very substantial. Even accepting as true their statements of who actually fired the fatal shots, it cannot be said that their participation was relatively minor. By their own statements their participation up to the moment of the firing of the fatal shots

was substantially the same as that of Randy Greenawalt and Gary Tison. At the moment of the firing [156] their participation may not have equalled that of Randy Greenawalt and Gary Tison, but their standing and watching then while armed themselves cannot be characterized as relatively minor participation.

4. Each defendant could reasonably have foreseen that his conduct in the course of the commission of the offenses for which he was convicted would cause or create a grave risk of causing death to another person.

There are mitigating circumstances present. They are:

1. The youth of the defendants, Ricky being 20 years of age and Raymond being 19 years of age.

2. The defendants have no prior felony convictions and their criminal activity before July 30, 1978 was very minimal.

3. They have been convicted of four murders under the felony murder instructions.

All references in this special verdict to the Arizona Revised Statutes are to the sections of those statutes as they were numbered at the time of the commission of the offenses and prior to October 1, 1978.

Included in the presentence report and considered by me was a psychological evaluation of the defendants' mother which defense counsel specifically requested this Court consider. That evaluation is now sealed, made a part of the record, and will be opened [157] only on order of this Court or any appellate court.

Ricky Tison and Raymon Tison, you were charged by indictment with the commission of the crimes of four counts of murder in the first degree, two counts of armed robbery, four counts of kidnapping, and one count of theft of a motor vehicle, to which charges you entered pleas of not guilty. Thereafter the kidnapping of Christopher Lyons charge was dismissed. On the 27th day of February, 1979, as to Ricky Wayne Tison, and on the 6th day of March, 1979, as to Raymond Curtis Tison, after a trial by jury, verdicts of guilty were returned

against each of you for the commission on or about August 1, 1978, of the crimes of: murder in the first degree of John F. Lyons, murder in the first degree of Donnelda Lyons, murder in the first degree of Christopher Lyons, murder in the first degree of Teresa Jo Marie Tyson, kidnapping of John F. Lyons, kidnapping of Donnelda Lyons, kidnapping of Teresa Jo Marie Tyson, armed robbery of John F. Lyons, armed robbery of Donnelda Lyons, and the theft of a motor vehicle with the intent to permanently deprive the owner of its possession.

Have you any legal cause to show, Mr. Beers, why judgment should not be pronounced?

MR. BEERS: None except for the objections I have already noted in the presentence report.

THE COURT: Very well. Mr. Bagnall?

[158] MR. BAGNALL: I have no objections other than my notations. Also I would ask the Court if the Court is in a position to hear a statement from either one of the defendants at this time?

THE COURT: Yes. First of all, Mr. Beers, do you wish to be heard further?

MR. BEERS: Just very briefly, Your Honor. I have explained my position fully in the memorandum. I feel when all the factors are considered that the death penalty is not appropriate for either of these boys. I have listed factors in my memorandum. I don't think I have exaggerated anything and I think when the Court looks at all the circumstances how the murders took place, the background of these boys, I think that the Court does have reason to show leniency in this case. That's all I have to say.

THE COURT: Ricky, do you have anything you wish to say?

RICKY TISON: Just that it tears me up that that family was killed. It's something that I won't forget.

THE COURT: Mr. Bagnall?

MR. BAGNALL: If it please the Court, I feel that Mr. Beers' memorandum completely refuted the memorandum issued by the county attorney's office. And regarding the evidence produced at the aggravation-mitigation hearing, all the evidence presented by the State of Arizona was presented as to matters which [159] are ex post facto and therefore I should think should have no, absolutely no bearing on the case.

I do believe that as I stated before that the probation officer's report's conclusions were excessively protagonistic on behalf of the position taken by the State of Arizona through the county attorney. and I ask that Mr. Raymond Tison be allowed to advise the Court of his own position in this matter?

THE COURT: Raymond, you wish to make a statement?

RAYMOND TISON: Well, I just think you should know when we first came into this we had an agreement with my dad that nobody would get hurt because we wanted no one hurt. And when this came about we were not expecting it. And it took us by surprise as much as it took the family by surprise because we were not expecting this to happen. And I feel bad about it happening. I wish we could do something to stop it, but by the time it happened it was too late to stop it. And it's just something we are going to live with the rest of our lives. It will always be there.

THE COURT: No legal cause having been shown why judgment and sentence should not now be pronounced against the defendants it is the judgment of the Court that you be punished for these crimes in the following manner—consideration has been given to time already spent in custody:

1. For the crime of theft of [160] a motor vehicle with intent to deprive the owner of its possession permanently, by commitment to the Department of Corrections of the State of Arizona for a term of not less than



four nor more than five years to commence from this date.

2. For the crime of robbery of John F. Lyons while armed with a gun, by commitment to the Department of Corrections of the State of Arizona for a term of not less than 50 years nor more than life to commence on this date.

Number three. For the crime of robbery of Donnelda Lyons while armed with a gun, by commitment to the Department of Corrections of the State of Arizona for a term of not less than 50 years nor more than life to commence on this date.

Number four. For the crime of kidnapping of John F. Lyons by commitment to the Department of Corrections of the State of Arizona for life imprisonment without possibility of parole, commencing on this date.

Number five. For the crime of kidnapping of Donnelda Lyons by commitment to the Department of Corrections of the State of Arizona for life imprisonment without possibility of parole, which sentence shall commence on this date.

Number six. For the crime of kidnapping of Teresa Jo Marie Tyson by commitment to the Department of Corrections of the State of Arizona for life imprisonment without possibility of parole, which [161] sentence shall commence on this date.

Number seven. In determining what punishment should be imposed for your convictions of murder of John F. Lyons, Donnelda Lyons, Christopher Lyons and Teresa Jo Marie Tyson, this Court has weighed the aggravating circumstances and the mitigating circumstances set forth in its special verdict. This Court finds that there are no mitigating circumstances sufficiently substantial to call for leniency. Therefore, each of you is sentenced to death on each of the murders of which you have been found guilty, and you shall be committed to the Department of Corrections of the State of Arizona to carry out that sentence in accordance with the provisions of A.R.S.

13-1654 and 13-1655. References are to those sections of the Arizona Revised Statutes as they were numbered prior to October 1, 1978 and at the time of the commission of the crimes of murder.

Because of the imposition of the death sentence the clerk is directed to enter a notice of appeal on behalf of the defendants. The defendants are advised that they also have a right to appeal any orders of this Court and other convictions. In order to do so you must file a written notice of appeal within 20 days of this date. If you do not do so then you lose your right to appeal.

If you wish to appeal and you cannot afford counsel, counsel will be appointed at no expense to you. And a certified copy of all proceedings [162] will be furnished at no expense to you. Your right to appeal has been set forth in a form which the clerk will give to your attorneys at this time. You may keep one of the copies. Sign the other one and it will be filed with the Court.

. . . .

IN THE SUPREME COURT OF THE  
STATE OF ARIZONA

In Banc

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No. 4624

STATE OF ARIZONA, APPELLEE

v.

RAYMOND CURTIS TISON, APPELLANT

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Filed: July 9, 1981

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Appeal from the Superior Court of Yuma County  
Cause No. 9299  
Honorable Douglas W. Keddie, Judge

AFFIRMED

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OPINION

STRUCKMEYER, Chief Justice

This is an appeal by Raymond Curtis Tison from judgments of guilty to four counts of murder in the first degree and sentences of death thereon, two counts of armed robbery, three counts of kidnapping, and one count of theft of a motor vehicle. It is a companion case to that of Ricky Wayne Tison, No. 4612, decided this date. Judgments and sentences affirmed.

On July 30, 1978, appellant and his two brothers, Ricky and Donald Tison, visited the Arizona State Prison at Florence, Arizona. Appellant went to the north annex, ostensibly to see his father, Gary Tison, who was serving a life sentence for murder. Gary Tison's cellmate, Randy Greenawalt, another convicted murderer, was close by in the control room. Appellant's two brothers, Ricky and Donald Tison, while in the yard office of the annex, took out guns which had been concealed in an ice chest. Greenawalt was given a gun and he passed it to Gary Tison. The guards who were present and some prison visitors were locked in a storage closet. The Tisons, with Greenawalt, then left the prison in an escape.

On August 6, 1978, an abandoned Lincoln Continental was found near Quartzsite, Arizona. The body of John Lyons was found near the vehicle and the bodies of Donelda Lyons, his wife, and their twenty-two-month-old son, Christopher, were found inside the car. Another body, that of Theresa Tyson, the Lyonses' niece, was found one-fifth of a mile west of the vehicle. It was established that the Lyonses had left their home in Yuma, traveling toward Las Vegas, Nevada, in a late model Mazda on the evening of July 31, 1978. This vehicle was eventually found partially buried and covered with pine tree branches near Flagstaff, Arizona.

In the early morning hours of August 11, 1979, appellant, together with Ricky Tison and Randy Greenawalt, was captured near Casa Grande, Arizona after a high speed chase. They attempted to run a roadblock in a stolen Ford van. All were armed with weapons. During the capture, Donald Tison, the driver of the van, was shot in the head. Gary Tison fled into the desert and was found dead a few days later.

Appellant was tried along with Greenawalt and Ricky Tison in Pinal County, Arizona for crimes occurring at the prison and at the roadblock. Appellant was convicted of seventeen counts of assault with a deadly weapon, possession of a stolen motor vehicle, unlawful flight from



a pursuing law enforcement vehicle, and aiding and assisting an escape. These convictions were affirmed by this Court in *State v. Greenawalt, et al.* on the 24th day of February, 1981, — *Ariz.* —, 626 P.2d 118 (1981).

The convictions being upheld here resulted from a trial in Yuma County, conducted immediately following the trials first of Greenawalt and then of Ricky Wayne Tison. Greenawalt's convictions for murder, armed robbery, kidnapping and theft of a motor vehicle and sentences were affirmed by this Court in *State v. Greenawalt*, — *Ariz.* —, 624 P.2d 828 (1981). Ricky Wayne Tison's appeals from convictions for similar offenses were resolved this day in Cause No. 4612.

Appellant has presented twenty-two assignments of error, most of which do not differ from those asserted and resolved in the companion case of *State v. Ricky Wayne Tison*, — *Ariz.* —, — P.2d — (1981) (No. 4612, filed this date). The similarity of the issues in the two cases was recognized by counsel for Raymond Curtis Tison in his motion to consolidate oral arguments:

"The two cases have a number of issues in common, including all of the conspiracy issues, felony-murder issues, vicarious liability questions, and death penalty issues, over which separate oral argument would be redundant."

We therefore find it unnecessary to reconsider the following issues which were discussed and resolved in *State v. Ricky Wayne Tison*, Cause 4612, *supra*: (1) that the plea agreement should be specifically enforced against the State, since it improperly compelled the appellant to withdraw from the agreement; (2) that an expert should have been appointed to conduct a public opinion survey; (3) that the trial court erred in giving the conspiracy instructions when the prosecution relied on the theory of aiding and abetting to impose criminal liability; (4) that the trial court erred in the conspiracy instructions given because Arizona law does not recognize vicarious

liability for the acts of a co-conspirator; (5) that it was fundamental error for the trial court to fail to instruct the jury on the elements of the crime of conspiracy; (6) that the trial court erred by failing to instruct on the elements of escape from legal custody and avoidance or prevention of lawful arrest contained in the felony murder statute; (7) that the trial court erred in failing to instruct on termination of a felony underlying application of the felony murder rule; (8) that the trial court erred in failing to provide transcripts of co-defendant Randy Greenawalt's trial, see *State v. Greenawalt*, — *Ariz.* —, 624 P.2d 828 (1981); (9) that the sentencing judge erred in his interpretation of the aggravating circumstances contained in A.R.S. § 13-454(E) (now § 13-703(F)); (10) that the death penalty constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution; (11) that the decision in *State v. Watson*, 120 *Ariz.* 441, 586 P.2d 1253 (1978), *cert. denied* 440 U.S. 924 (1979), is unconstitutional because the mitigating portions of the statute are not severable from the remainder of the statute; (12) that *State v. Watson*, *supra*, constitutes a prohibited exercise of legislative power in violation of Article III of the Constitution of Arizona; (13) that *State v. Watson*, *supra*, constitutes a judicial enactment of a bill of attainder prohibited by Article I, Section 10 of the United States Constitution; (14) that the death penalty as re-created by *State v. Watson*, *supra*, will be imposed wantonly, arbitrarily and freakishly because it contains no ascertainable standards for the sentencing body to measure the relative weights of the aggravating and mitigating circumstances; (15) that the death penalty statute improperly allocates the burden of proof in requiring the defendant to prove the existence of mitigating factors and not requiring the prosecution to establish aggravating circumstances beyond a reasonable doubt; and (16) that the imposition of the sentence of death upon an individual convicted under a felony

murder theory without evidence that he was the actual perpetrator of the homicide or intended that the victim should die is grossly disproportionate and violates the prohibition against cruel and unusual punishment contained in the Eighth Amendment to the United States Constitution.

Our resolution here of the above enumerated issues is identical to their resolution in *State v. Ricky Wayne Tison*, *supra*.

In addition, appellant urges that as a result of the pretrial publicity, the trial court erred in denying his motions for change of venue, change of venire, continuance, sequestration of the jury and for individual voir dire. We will examine these assertions in the light of the established law that the determinations rest within the sound discretion of the trial court and will not be disturbed on appeal lacking a clear showing of abuse of discretion and resulting prejudice. *State v. Ricky Wayne Tison*, *supra*; *State v. Greenawalt*, et al., — Ariz. —, 626 P.2d 118 (1981); *State v. Greenawalt*, — Ariz. —, 624 P.2d 828 (1981).

It is appellant's position that pretrial publicity had so "permeated the community" and was so prejudicial that a change of venue was necessitated. He points to the fact that every member of the jury panel had some knowledge of the case.

In *State v. Schmid*, 107 Ariz. 191, 484 P.2d 187 (1971), this Court recognized that prior knowledge concerning a case by all of the empaneled jurors was an important factor for the trial judge to consider in ruling on the motion for change of venue, but that standing alone it did not demonstrate such prejudice as would necessitate a change of venue. The grounds for change of venue require the movant to show that pretrial publicity has the probable effect of precluding a trial by fair and impartial jurors. *State v. Ricky Wayne Tison*, *supra*; *State v. Greenawalt*, — Ariz. —, 624 P.2d 828 (1981). Nothing approaching such a showing was made

by appellant. Of the 50 prospective jurors that needed to be called to obtain a panel of 34, 16 expressed an unqualified opinion as to the guilt of the accused. These prospective jurors were excused and the remaining members of the panel, even though possessing some knowledge of the case, stated that they could try the case on the evidence presented in court. It is unnecessary for a juror to be totally ignorant of the facts of a case so long as he can lay aside his impression or opinions and render a verdict based on the evidence before him. *State v. Smith*, 123 Ariz. 231, 599 P.2d 187 (1979). While the assurances of impartiality by the jurors are not dispositive on the question of actual prejudice toward the defendant, in the absence of any showing of the probability of an unfair trial we will not upset the trial judge's ruling on the motion for change of venue. *Irvin v. Dowd*, 366 U.S. 717, 81 S.Ct. 1639, 6 L.Ed.2d 751 (1961). See *State v. Greenawalt*, et al., 626 P.2d 118, 122 (1981).

The appellant asserts that error was committed because the jury was not sequestered. He believes this procedure should have been adopted in order to prevent the jury from being exposed to the "massive publicity surrounding the trial." We do not agree. The record does not reflect the presence of such publicity, nor does it show jury misconduct or that the jury failed to follow the admonitions given by the trial judge.

Appellant claims the trial court erred in failing to conduct individual voir dire. The primary responsibility for the voir dire examination rests with the trial judge. See *State v. Ricky Wayne Tison*, *supra*, but if good cause appears, the court may permit counsel to examine an individual juror. Rule 18.5, Rules of Criminal Procedure, 17 A.R.S. This opportunity to ask questions of individual jurors was afforded counsel for appellant and he declined to do so. We will not disturb the trial court's selection of the jury in the absence of a showing that a jury of fair and impartial jurors was not chosen.



Appellant urges that he was denied a fair trial guaranteed by the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution and characterized the pretrial publicity as "unchecked and irresponsible journalism" which created a carnival-like atmosphere similar to the one condemned in *Sheppard v. Maxwell*, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966). He then points to specific items of media coverage which he believes reflect the extreme prejudicial conditions under which the trial was conducted. He complains of the press coverage concerning his involvement in the prison breakout of Gary Tison and Randy Greenawalt, his initial agreement to plead guilty and receive a life sentence in exchange for his testimony against co-defendant Greenawalt, his alleged confession, the physical evidence connecting appellant to the deaths of the Lyons family and Theresa Tyson, the listing of the names of witnesses in the Greenawalt trial who would most probably testify at appellant's trial, and the opinions of appellant's guilt in editorials and letters to the editors in various newspapers.

In *State v. Schmid*, 109 Ariz. 349, 509 P.2d 619 (1973), *supra*, we recognized that certain publicity similar to that described above could create prejudice to the extent of precluding the possibility of a fair trial. But to presume prejudice, outrageous circumstances must be present showing the lack of solemnity and sobriety appropriate to a judicial proceeding. *State v. Greenawalt*, — Ariz. —, 624 P.2d 828 (1981). Upon reviewing the record, we find nothing resembling such extreme circumstances. See *Murphy v. Florida*, 421 U.S. 794, 95 S.Ct. 2031, 44 L.Ed.2d 589 (1975).

We now turn to an examination of the actual publicity in the case to ascertain, first, if it reached prospective jurors and, second, if it was so prejudicial that the jurors could not have set it aside. *State v. Greenawalt, et al*, — Ariz. —, 626 P.2d 118 (1981). A review of the nature of the publicity and the relative difficulty in

selecting the jury can indicate the presence of actual prejudice. *Id.* It cannot be disputed that appellant's activities, together with the other Tisons', received massive publicity from the break out of the state prison until their capture near Casa Grande, some twelve days later. Thereafter, the Tisons and Greenawalt received less attention in the press. The only inflammatory articles which could possibly be considered prejudicial were two appearing in the *Arizona Republic*, a newspaper published in Phoenix, Arizona, nearly 200 miles from Yuma, the site of the trial.

On Wednesday, August 8, 1978, an editorial appeared in the *Arizona Republic*, entitled "Society Has Had It!" The tenor of the editorial is set in the first five sentences, which read:

"BLEEDING-HEART critics of the death penalty peg their case on the vacuous assertion that capital punishment is no deterrent to heinous crimes.

Let them come down from their lofty perches and tell that to the survivors of Marine Corps Sgt. John H. Lyons, 24, his wife, Dannela [sic], 23, and their son Christopher, 22 months.

They were found beside a highway near Quartzsite, riddled with pellets from repeated shotgun blasts.

Police are almost certain they were gunned down by two escaped Arizona prison inmates, Gary Tison, 43, and Randy Greenawalt, 28.

Now how does death penalty deterrence figure in this crime?"

On Wednesday, August 16, 1978, a column by Paul Dean of the *Arizona Republic* commenced in this fashion:

"The voice of the people is a towering yell.

More than 300 letters and telephone calls to me and to the editors of this newspaper have formed an angry appeal for protection from Greenawalt and the Tisons and the bestiality they are charged with

performing, may be continuing and could inspire others."

It was established that some of the prospective jurors read the Arizona Republic. These newspaper articles, however, appeared approximately six months prior to the date of trial. The ease with which a jury was selected strongly tends to suggest that publicity-caused prejudice did not extensively pervade the community nor influence jurors to the point of prejudicing appellant. While 16 of the 50 prospective jurors acknowledged that they were prejudiced against appellant, many were unaware of statements attributed to the appellant which had the greatest potential for the creation of jury prejudice. The circumstances were such that we do not find actual prejudice permeated the jury panel to the extent that appellant was deprived of a fair trial.

For similar reasons the court did not err in denying appellant's motions for change in the venire and for a continuance of the trial.

The appellant argues that the evidence presented by the State was not sufficient to support convictions for armed robbery, kidnapping and theft of a motor vehicle.

On appeal, this Court will not engage in re-weighing the evidence. *State v. Brown*, 125 Ariz. 160, 608 P.2d 299 (1980); *State v. Long*, 121 Ariz. 280, 589 P.2d 1312 (1979); *State v. Acree*, 121 Ariz. 94, 588 P.2d 836 (1978). It will be viewed in the light most favorable to sustaining the conviction and all reasonable inferences will be resolved against a defendant. *State v. Verdugo*, 109 Ariz. 391, 510 P.2d 37 (1973). The test to be applied is whether there is substantial evidence to support a guilty verdict. *State v. Childs*, 113 Ariz. 318, 553 P.2d 1192 (1976). In the recent case of *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979), it was held that due process requires a court to utilize as the standard of review whether there was sufficient evidence that a rational trier of fact could have found guilt beyond a reasonable doubt. The Court said:

"After *Winship* the critical inquiry on review of the sufficiency of the evidence to support a criminal conviction must be not simply to determine whether the jury was properly instructed, but to determine whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. But this inquiry does not require a court to 'ask itself whether it believes that the evidence at the trial established guilt beyond a reasonable doubt.' *Woodby v. INS*, 385 U.S. 276, 282, 87 S.Ct. 483, 486, 17 L.Ed. 2d 362. Instead the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See *Johnson v. Louisiana*, 406 U.S. 356, 362, 92 S.Ct. 1620, 32 L.Ed.2d 152. This familiar standard gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. Once a defendant has been found guilty of the crime charged, the factfinder's role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution. The criterion thus impinges upon 'jury' discretion only to the extent necessary to guarantee the fundamental protection of due process of law." 443 U.S. —, 99 S.Ct. at 2789-2790. (Footnotes omitted.) (Emphasis in original.)

In Arizona, the substantial evidence test applied to reviews on appeal is consistent with the constitutional principles enunciated in *Jackson v. Virginia*, supra. The manner in which we have defined the term "substantial evidence" supports this conclusion. We have said it means " \* \* \* more than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince



an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial." *State v. Bearden*, 99 Ariz. 1, 4, 405 P.2d 885 (1965). (Citations omitted.) This approach equates with the mandate in *Jackson* requiring the reviewing court to find that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. See *State v. Robinson*, 288 N.W.2d 337 (Iowa 1980). See also *Davis v. United States*, 385 F.2d 919 (5th Cir. 1967). Other jurisdictions with a standard of review similar to our own have reached the same conclusion. See *People v. Johnson*, 26 Cal.3d 557, 606 P.2d 738, 162 Cal.Rptr. 431 (1980); *State v. Lagasse*, 410 A.2d 537 (Me. 1980); *Wilkins v. State*, 609 P.2d 309 (Nev. 1980); *Hauger v. State*, 405 N.E.2d 526 (Ind. 1980); *State v. Robinson*, supra; *People v. Calvaresi*, 600 P.2d 57 (Colo. 1979); *State v. Brown*, 80 N.J. 587, 404 A.2d 1111 (1979); *State v. Atkins*, 261 S.E.2d 55 (W.Va. 1979), cert. denied 100 S. Ct. 1081 (1980). Those jurisdictions which have not specifically examined their standard in the light of the holding in *Jackson* have embraced it as a new standard for reviewing the sufficiency of evidence. See *State v. Filson*, 101 Idaho 381, 613 P.2d 938 (1980); *People v. McDonald*, 409 Mich. 110, 293 N.W.2d 588 (1980); *State v. Letterman*, 603 S.W.2d 951 (Mo.App. 1980); *State v. Hardy*, 419 A.2d 398 (N.H. 1980); *State v. Harris*, 288 Ore. 703, 609 P.2d 798 (1980); *Young v. State*, 407 A.2d 517 (Del. 1979); *Moore v. State*, 151 Ga.App. 120, 258 S.E.2d 917 (1979); *State v. Voiles*, 226 Kan. 469, 601 P.2d 1121 (1979); *State v. Abercrombie*, 375 So.2d 1170 (La. 1979); *State v. Rusk*, 289 Md. 230, 424 A.2d 720 (1981); *State v. Barbour*, 43 N.C.App. 143, 258 S.E.2d 475 (1979); *Holt v. State*, 591 S.W. 785 (Tenn. 1979). Our review function will therefore be concerned with whether there exists substantial evidence from the entire record from

which a rational trier of fact could have found guilt beyond a reasonable doubt.

Appellant was held responsible for these crimes through the application of A.R.S. § 13-139 (now A.R.S. § 13-301). Liability as a principal is predicated upon proof that a defendant was concerned in the commission of a crime whether directly committing the crime or aiding and abetting its commission. Aiding and abetting presupposes active participation in the offense or advice or encouragement in the commission and a corresponding intent to facilitate the perpetration. *State v. Bearden*, supra.

The evidence introduced by the prosecution clearly supports the appellant's convictions for armed robbery, kidnapping and theft of a motor vehicle under the aiding and abetting theory of criminal responsibility. While there was no direct testimony that appellant actively participated in the commission of these crimes, there was ample circumstantial evidence from which the jury could have reasonably inferred that the applicant had assisted in their commission.

Appellant's fingerprint was found on the door release button of the Lincoln Continental, where two of the victims' bodies were found, thereby strongly suggesting that he was present at the scene of the homicides. Although a defendant's presence at the time and place of the crime in the absence of preconcert does not establish guilt as an aider, abettor or principal, *State v. Hernandez*, 112 Ariz. 246, 540 P.2d 1227 (1975); *State v. Sims*, 99 Ariz. 302, 409 P.2d 17 (1965), cert. denied 384 U.S. 980 (1966), an intent to engage in the criminal venture may be shown by the relationship of the parties and their conduct before and after the offense. *State v. Beard*, 107 Ariz. 388, 489 P.2d 25 (1971); *State v. Villegas*, 101 Ariz. 465, 420 P.2d 940 (1966); *State v. Parker*, 121 Ariz. 172, 589 P.2d 46 (App. 1978).

It is clear that appellant and his brothers were intimately engaged in a scheme designed to free their

father from imprisonment. It can be reasonable to infer that their goal did not change from the time of the initial active assistance in breaking out of the prison through their capture eleven days later. The uncontradicted evidence established that appellant, along with his brother Ricky, made the arrangements with their uncle, Joe Tison, to obtain the automobile and various weapons which were used in the prison breakout. Appellant actively participated in the escape by bringing weapons into the trustee control annex, by holding prison guards and others at gunpoint, and fleeing in the company of his father, his brothers and Greenawalt.

The testimony of a Wenden, Arizona store clerk established that appellant was in Yuma County on August 1, 1978, at a time shortly after the homicides were committed. He and his brothers purchased silver spray paint which was used to disguise the Lyonses' stolen Mazda near Flagstaff. On August 2, 1978, appellant was seen in Flagstaff near the location of the partially buried, stolen Mazda. Finally, on August 11, 1978, appellant, together with Greenawalt and Ricky Tison, were captured after a high speed chase near Casa Grande. In the light of this evidence, it is reasonable for the jury to have inferred that appellant was not only present at the scene of the crimes, but willingly participated in the doing of whatever was necessary to complete the escape and to prevent capture. Appellant had eleven days after the breakout to disassociate himself from further participation in the criminal venture, but he did not. The jury could have readily concluded beyond a reasonable doubt that appellant was more than an abettor but was, rather, a direct participant in commission of the robbery, kidnapping and theft.

Finally, evidence of the appellant's flight supports an inference that the appellant was guilty of the offenses. He did not simply leave the scene of the crimes, for this, alone, would not support an inference of guilt. See *State v. Ceja*, 113 Ariz. 39, 546 P.2d 6 (1976), *appeal after*

*remand* 115 Ariz. 413, 565 P.2d 1274, *cert. denied* 434 U.S. 975 (1977). Rather, appellant and his companions repeatedly changed motor vehicles and sought to conceal the change by abandoning the Lincoln some distance off the highway, camouflaging the Mazda with paint and pine branches, and by abandoning at a Chevrolet dealership in Colorado the four-wheel-drive pickup obtained in Flagstaff. At the roadblock in Pinal County, Arizona, appellant, to avoid being apprehended, ran into the desert with Greenawalt and his brother Ricky. Flight to avoid capture is circumstantial evidence of the guilt of an accused. *State v. Sorensen*, 104 Ariz. 503, 455 P.2d 981 (1969).

The circumstantial evidence when examined as a whole did provide the jury with sufficient evidence from which it could have found appellant guilty beyond a reasonable doubt of armed robbery, kidnapping and theft. The lack of direct evidence of guilt does not preclude such a conclusion since a criminal conviction may rest solely upon proof of a circumstantial nature, *State v. Carriger*, 123 Ariz. 335, 599 P.2d 788 (1979), *cert. denied* 444 U.S. 1049 (1980). It is unnecessary for the prosecution to negate every conceivable hypothesis of innocence when guilt has been established by circumstantial evidence. *State v. Olivas*, 119 Ariz. 22, 579 P.2d 60 (App. 1978).

The evidence at Raymond's trial relating to the location of the bodies and wounds was similar to that introduced at Ricky's trial. For the reasons set forth in *State v. Ricky Wayne Tison* (No. 4612), *supra*, we are not convinced "a grave risk of death" was created to others, and hold here, as we did there, that the aggravating circumstances to be found in A.R.S. § 13-454(E)(3) does not apply.

The aggravating circumstance to be found in A.R.S. § 13-454(E)(5) is, however, clearly established. The bodies of the victims were in and around the Lincoln Continental which had been used by appellant and his companions in the escape. After its abandonment, they



left the scene of the homicides in the Lyonses automobile. Considering all the facts, the conclusion is justified that the homicides were committed to secure a vehicle with which to continue their flight.

We agree with the trial judge's finding that the murders were "committed \* \* \* in an especially heinous \* \* \* or depraved manner", A.R.S. § 13-454(E)(6). One of the victims was a twenty-two-month-old child held in the arms of his mother. We reject the appellant's argument that this aggravating circumstance can be found only if he actually committed the murders. Appellant is in effect saying that since he did not personally pull the trigger of the guns used to commit the homicides, he cannot be held responsible for committing the offenses in an especially heinous, depraved manner.

As in the case of Ricky Tison, the trial judge found in mitigation of the offenses appellant's age, his minimal prior criminal activity, and that his convictions were based on the felony murder rule, former A.R.S. § 13-452. Appellant argues mitigation also exists in that he was strongly manipulated by his father, Gary Tison, pointing to the psychological reports on his mother and himself.

The psychologist did find a "very subtle sense of emotional manipulation on the part of" appellant's father, Gary Tison, which may have contributed in part to appellant's "amoral and somewhat antisocial development \* \* \*." The psychologist concluded appellant "was not, in my opinion, operating under any irresistible impulse or irresistible urge" and did not conclude that appellant was under undue influence or duress.

Because the law is egalitarian, all persons are held accountable for the results of their conduct, it being presumed that all possess a free will. See Dressler, *The Jurisprudence of Death by Another: Accessories and Capital Punishment*, 51 U.Col.L.Rev. 17 (1979). Even though Gary Tison had significant influence with appellant, the evidence does not support the notion that appel-

lant's will was overwhelmed or that appellant was anything other than a willing participant in the escape and the subsequent events. The sentencing judge did not find Gary Tison's influence or "subtle \* \* \* manipulation" to be "sufficiently substantial to call for leniency." Nor do we.

Neither do we find the letters written on behalf of appellant, to the effect that he was essentially a peaceful person, of much value in light of the evidence that appellant exhibited his willingness to use force and violence at the time of the prison breakout and on subsequent occasions by violent criminal conduct. Even the psychological report offered in mitigation revealed appellant's potential for violence:

"Raymond \* \* \* felt almost certainly that if they became involved with legal authorities or were near capture that a shooting incident would occur. He stated that in terms of innocent civilians being injured that it was most unfortunate but that his father was in charge. His father was running it like 'a military operation and there were no survivors—you know, that sort of thing—no witnesses.'"

Appellant points to his limited participation in the murders. To prove his limited participation, he joined with Ricky Tison in arguing that Ricky's statement showed that neither he nor Ricky engaged in the actual shooting nor did they intend the deaths of the victims. In upholding the sentence and conviction of Ricky Tison, we said as to both brothers that the non-participation in the shooting was not controlling since both took part in the robbery, the kidnapping, and were present assisting in the detention of the Lyonses and Theresa Tyson while the homicides were committed.

The mitigating circumstances when considered separately and collectively are not sufficiently substantial to call for leniency.

Appellant complains that he did not receive a fair trial because he was denied effective assistance of counsel. Since *State v. Kruchten*, 101 Ariz. 186, 417 P.2d 510 (1966), *cert. denied* 385 U.S. 1043 (1967), the standard in Arizona has been whether counsel was so ineffective that the proceedings were reduced to a farce, sham or mockery of justice. Recently, in *State v. Williams*, 122 Ariz. 146, 593 P.2d 896, we recognized that many jurisdictions have discarded the farce, sham or mockery of justice test and have adopted the reasonably effective assistance of counsel standard. We have not adopted the reasonably effective assistance of counsel as the test. Nevertheless, after examining the record, we find no indication that trial counsel's efforts were inadequate judged by either standard. See *State v. Moreno*, — Ariz. —, 625 P.2d 320 (1981); *State v. Flewellen*, — Ariz. —, 621 P.2d 29 (1980).

The burden of establishing the ineffectiveness of trial counsel is upon a claimant, *State v. Pacheco*, 121 Ariz. 88, 588 P.2d 830 (1978); see *State v. Watson*, 114 Ariz. 1, 559 P.2d 121 (1976), and proof of ineffectiveness must be a demonstrable reality not merely a matter of speculation. See *State v. Daniel*, 25 Ariz.App. 592, 545 P.2d 440 (1976); *People v. Stephenson*, 10 Cal.3d 652, 517 P.2d 820, 111 Cal.Rptr. 556 (1974). Moreover, errors in trial tactics or strategy *per se* do not constitute inadequate representation. *State v. Flewellen*, *supra*; *State v. Dippre*, 121 Ariz. 596, 592 P.2d 1252 (1979); *State v. Farni*, 112 Ariz. 132, 539 P.2d 889 (1975).

Appellant asserts that his trial counsel inadequately cross-examined the witnesses for the State. But, as the State points out, counsel for appellant did engage in cross-examination of several witnesses, exposing inconsistencies in their testimony. In hind-sight, we see no indication that the questioning of the State's witnesses was inadequate. But were it otherwise, the manner in which cross-examination is conducted is a tactical decision to be made by the lawyer. See Standard 4-5.2,

A.B.A. Standards for Criminal Justice. The method utilized is not indicative of inadequate representation. See *State v. Farni*, *supra*.

Appellant claims that counsel's "failure to fully argue his case to the jury at the conclusion of the trial" shows ineffective representation. Counsel did argue that guilt had not been proven beyond a reasonable doubt in the light of the failure of the State to prove the extent of appellant's participation in the homicides. The failure to engage in a lengthy closing argument does not necessarily show incompetence, since silence by trial counsel may be the most effective trial tactic. See *State v. Martinez*, 19 Ariz.App. 417, 508 P.2d 82, *cert. denied* 414 U.S. 1027 (1973).

Appellant asserts that it was error for counsel to fail to individually examine prospective jurors. Appellant's argument overlooks the fact that the questioning carried out by the trial judge could have been adequate in counsel's judgment. Moreover, the decision to ask additional questions may be in part predicated on strategy and, hence, one which rests peculiarly within the province of counsel. The failure to ask unnecessary questions is not indicative of ineffective representation. See *Gustave v. United States*, 627 F.2d 901 (9th Cir. 1980).

Finally, the appellant asserts that he received only a minimal defense. He does not point out, however, what more could have been done which would support his claim. Considering the record of appellant's trial as a whole and the prosecution's evidence, we do not believe that counsel was ineffective as an attorney or that he presented a lackluster defense. If the assertion of ineffective assistance of counsel on the grounds of a minimal effort is made, the record should establish where further effort would have been to a defendant's advantage. See *State v. Rackley*, 106 Ariz. 424, 477 P.2d 255 (1970).



Judgments and sentences affirmed.

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FRED C. STRUCKMEYER, JR.  
Chief Justice

CONCURRING:

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WILLIAM A. HOLOHAN, Vice Chief Justice

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JACK D. H. HAYS, Justice

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JAMES DUKE CAMERON, Justice

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FRANK X. GORDON, JR., Justice

IN THE SUPREME COURT OF THE  
STATE OF ARIZONA  
In Banc

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No. 4612

STATE OF ARIZONA, APPELLEE

v.

RICKY WAYNE TISON, APPELLANT

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Filed: July 9, 1981

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Appeal from the Superior Court of Yuma County  
Cause No. 9299  
Honorable Douglas W. Keddle, Judge

AFFIRMED

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OPINION

STRUCKMEYER, Chief Justice

This appeal is by Ricky Wayne Tison from judgments of guilty and death sentences on four counts of first degree murder. He also appeals from judgments of guilty and sentences on three counts of kidnapping, two counts of armed robbery, and one count of theft of a motor vehicle. Jurisdiction of this Court is pursuant to A.R.S. § 13-4031.

On July 30, 1978, appellant and his two brothers, Raymond and Donald Tison, assisted in the escape of their father, Gary Tison, and Randy Greenawalt from the Arizona State Prison. Both appellant's father and Greenawalt were serving life sentences for murder at the time. Appellant's convictions for crimes arising out of the prison escape and subsequent capture twelve days later were recently affirmed by this Court. *State v. Greenawalt, et al., — Ariz. —, 626 P.2d 118 (1981)*.

The five men fled the prison in a green Ford. Later they transferred to a Lincoln Continental. The Lincoln was discovered on August 6, 1978 in Yuma County, Arizona near Quartzsite. In and around the vehicle were the bodies of John and Donnelda Lyons and their twenty-two-month-old son, Christopher. The body of a niece of the Lyonses, Theresa Tyson, was later found approximately one-fifth of a mile west of the Lincoln. All four had died from shotgun wounds.

The Lyonses had left Yuma on the night of July 31, 1978 on a vacation in a late model Mazda. A vehicle matching this description was subsequently discovered in Coconino County, Arizona near Flagstaff.

On August 11, 1978, the appellant, together with the other Tisons and Greenawalt, ran through two roadblocks south of Casa Grande, Arizona in a Ford van. After exchanging gunfire with police officers at the roadblocks, the van turned off into the desert and stopped. Donald Tison was found in the driver's seat of the van. He had been shot in the head. Appellant, his brother Raymond, and Greenawalt were captured in the desert. Gary Tison was found dead several days later further on into the desert.

This Court recently affirmed Greenawalt's convictions and sentences arising from the four murders near Quartzsite. *State v. Greenawalt, — Ariz. —, 624 P.2d 828 (1981)*. Today we affirm Betty and Raymond Tison's convictions and sentences for these crimes in this opinion and in the companion opinion of *State v. Raymond*

*Curtis Tison, — Ariz. —, — P.2d — (1981)* (No. 4624, filed this date).

After his capture, appellant made statements describing the prison breakout and subsequent activities, including the four murders. From these statements and other evidence introduced at trial, it was established that the breakout had been planned for some time. Appellant took an active part in the preparation, including obtaining guns and the Lincoln Continental. A gunsmith testified that appellant approached him about sawing off shotguns. The gunsmith also stated appellant, through his mother, purchased a .45 caliber Colt handgun from him. Two cartridges identified as having been fired from this gun were found near the murder scene.

Appellant in his statements explained that the Lincoln became disabled with a flat tire near Yuma. The Mazda was flagged down and all five men pulled guns on the Mazda's occupants, who were taken out of that car and placed in the Continental. Both cars were then taken down another road and parked trunk to trunk. Articles were exchanged between cars, and money and weapons belonging to John Lyons were taken. The Continental was then moved a short distance further, where Gary Tison and Greenawalt shot the victims.

The five men drove off in the Mazda. Within hours, appellant purchased paint to use on the Mazda. A few days later, the repainted Mazda was abandoned in the woods near Flagstaff.

The appellant first contends that a plea agreement which he had entered into should be specifically enforced against the State because, he asserts, he was willing to abide by the terms of the agreement. The agreement provided that appellant would plead guilty to one count of murder in the first degree for a recommended sentence of 25 years to life. In exchange, appellant would:

“ . . . appear and testify truthfully in any proceedings pertaining to criminal charges relating to an incident occurring on or about August 1, 1978



in which the John Lyons family and Theresa Tyson were killed."

Appellant thereafter gave statements describing his participation in the murders, but a dispute arose as to the scope of the testimony which he would give in subsequent proceedings. Consequently, appellant withdrew his plea of guilty. Raymond Tison, in response to questions from the trial judge, explained:

"MR. RAYMOND TISON: Okay, the plea agreement says the incident. I figured they were talking about this incident going on up at Quartzsite. I had no idea that you were going to be asking about other people involved, about the escape, all this, and maybe what happened afterwards. I thought it was just going to be that incident. I would be happy to get up there and testify just to that incident, but that's it. I'm not involving nobody else. I'm staying right there. I will start from one time before we came there and before we left or to wherever we left.

THE COURT: Is that your position also Ricky?

MR. RICKY TISON: Yes."

The appellant's position that the plea agreement should be specifically enforced against the State arises from his understanding of *Santobello v. New York*, 404 U.S. 237, 92 S.Ct. 495, 30 L.Ed.2d 427 (1971). There, the prosecution promised not to make a recommendation for sentencing in exchange for the accused's plea of guilty. At the sentencing hearing, the prosecutor appeared and recommended that the maximum sentence be imposed, contrary to an earlier prosecutor's avowal that no recommendation as to the sentence would be made. The sentencing judge imposed the maximum sentence. The United States Supreme Court, in disapproving the practice, stated:

"\* \* \* when a plea rests in any significant degree on a promise or agreement of the prosecutor, so that

it can be said to be part of the inducement or consideration, such promise must be fulfilled." 404 U.S. at 262, 92 S.Ct. at 499.

*Accord*, *State v. Stone*, 111 Ariz. 62, 523 P.2d 493 (1974). The Court vacated the judgment and remanded to the state court to either allow the defendant the opportunity to withdraw the plea or specifically enforce the agreement against the prosecution.

While the remedy of specific performance of the plea bargain was sanctioned in *Santobello* for the unkept bargains of a prosecutor, it has rarely been used. See Note, *The Legitimation of Plea Bargaining; Remedies for Broken Promises*, 11 Am.Crim.L.Rev. 771 (1973). And see *United States v. Nathan*, 476 F.2d 456, 459 (2nd Cir. 1973), where specific enforcement of a plea agreement was refused because the defendant failed to disclose the agreed information.

The appellant argues in spite of his failure to carry out the terms of the plea bargain that he should be entitled to specific performance. He asserts that he was compelled to withdraw from his plea of guilty because the agreement's scope had been too broadly construed by the prosecution. We disagree. By the terms of the plea agreement, appellant was to provide testimony "in any proceedings", which he has refused to do. His non-compliance with the plea agreement precludes him from the relief requested.

It is argued that the language of the plea bargain did not contemplate appellant's testimony as to the conspiracy and the prison breakout, but neither did it explicitly limit his testimony to the events at the scene of the Yuma County murders. A guilty plea will not be set aside because of a "defendant's mistaken subjective impressions \* \* \* absent substantial objective evidence showing such impressions to be reasonably justified \* \* \*", *State v. Pritchett*, 27 Ariz.App. 701, 703, 558 P.2d 729 (1976); see *State v. Zarate*, 106 Ariz. 450, 478 P.2d 74 (1970). Neither will a plea agreement be specifically enforced

according to a defendant's unilateral interpretation of the terms of the bargain in the absence of objective evidence indicating that the interpretation is reasonably justified. See *Adamson v. Superior Court of Arizona*, 125 Ariz. 579, 611 P.2d 932 (1980). In *State v. Cornwall*, 114 Ariz. 550, 552, 562 P.2d 723 (1977), we held:

"\* \* \* it is the duty of all parties involved to insure that the agreement which is eventually filed with the court contains the exact and complete agreement, no more, no less. And because the requirement to have the exact agreement in writing before the court applies with equal force to the defense, we are of the opinion that, had the defendant wished to plead under a different agreement or had he wished the inclusion of terms and conditions not already contained therein, it was incumbent upon him to object and to require the exact agreement to be evidenced in writing \* \* \*."

It is also appellant's contention that the State did not prove he breached the terms of the plea agreement and that an evidentiary hearing on this question should have been conducted by the court below. We think, however, that the State has satisfied its burden of proof because the unequivocal refusal to testify by the appellant establishes a breach of the plea bargain. Moreover, the claim of error because of the failure to hold an evidentiary hearing on this question is waived since it was not requested in the court below. See *State v. Coward*, 108 Ariz. 270, 496 P.2d 131 (1972).

Appellant urges that the trial court erred in not appointing an expert to conduct a public opinion survey to support appellant's motion to change venue. Our statute provides for the appointment of experts in capital cases when such experts are reasonably necessary to adequately present a defense. A.R.S. 13-1673(B) (now A.R.S. § 13-4013(B)). Constitutional considerations may also mandate the appointment of investigators to aid in

preparing a defense. See *Mason v. State of Arizona*, 504 F.2d 1345 (9th Cir. 1974); *State v. Knapp*, 114 Ariz. 531, 562 P.2d 704 (1977). But there was no error here in the denial of an expert to conduct a public opinion survey since the expert's findings would have no "bearing on the ultimate question of \* \* \* guilt or innocence" and therefore the expert was not necessary to the preparation of a defense. *State v. Smith*, 123 Ariz. 231, 237, 599 P.2d 187 (1979); see *State v. Greenawalt*, — Ariz. —, 624 P.2d 828, 833 (1981); *State v. Powers*, 96 Idaho 833, 537 P.2d 1369 (1975).

Appellant urges that the trial court erred in its failure to excuse for cause a juror who expressed an opinion as to the guilt of appellant. On voir dire, the juror first noted that she had been especially moved by the killing of the child and she then expressed a belief that appellant was guilty. But she responded affirmatively when asked if she could judge the case on the evidence presented. When she was challenged for cause, this exchange occurred between the prosecution and the trial judge:

"MR. IRWIN: Your Honor, we think that Mrs. Jackson should be permitted to stay on the jury. That is a fact, of course, that she evinces some emotion. A person wouldn't be a normal person if they didn't. She indicated that she would be able to set aside evidence she had seen in the newspapers, read about, heard about, and try the case fairly on the evidence presented in the courtroom.

THE COURT: Yes, I understood Mrs. Jackson to state that she could judge the case on the evidence produced in the court. The challenge is overruled."

The appellant attacks our decision in *State v. Narten*, 99 Ariz. 116, 407 P.2d 81 (1965), as denying him due process because it permits jurors with a preconceived notion of the guilt or innocence of the accused to sit on the jury. In *Narten* we held that jurors possessing an unqualified opinion should be disqualified because it would necessarily carry over and affect their ultimate



decision in the case. The fact, however, that a prospective juror possesses an opinion or belief regarding the guilt of the defendant does not mean that the juror would be influenced by that belief and could not render a fair and impartial verdict. See *Burnett v. State*, 34 Ariz. 129, 268 P. 611 (1928). See also *State v. Greenawalt, et al*, — Ariz. —, 626 P.2d 118, 123-124 (1981). The responsibility for determining whether a juror can render a fair and impartial verdict lies with the trial court, and we will not disturb that exercise of discretion absent a clear showing of an abuse of discretion. *State v. Rose*, 121 Ariz. 131, 589 P.2d 5 (1978). The trial judge was satisfied that the juror could deliberate and render a fair and impartial verdict. Without a showing of unqualified partiality of the juror, we will not upset a determination so clearly within the province of the court.

Appellant argues that the trial court improperly denied various pretrial motions urged by appellant. The determinations of these motions also rests within the sound discretion of the trial court and will not be disturbed absent a clear showing of an abuse of discretion and resulting prejudice to the defendant. *State v. Greenawalt, et al*, — Ariz. —, 626 P.2d 118 (1981); *State v. Greenawalt*, — Ariz. —, 624 P.2d 828 (1981).

Appellant's position is, first, that the trial court erred in refusing to grant a motion for change of venue because of the pretrial publicity.

Rule 10.3(b), Rules of Criminal Procedure, 17 A.R.S. provides:

"Whenever the grounds for change of place of trial are based on pretrial publicity, the moving party shall be required to prove that the dissemination of the prejudicial material will probably result in the party being deprived of a fair trial."

The trial judge learned through voir dire that all of the potential jurors who were needed to obtain a panel of 34 had some familiarity with the events in question.

Mere knowledge of the facts of a case standing alone does not mandate a change of venue. See *State v. Greenawalt*, — Ariz. —, 624 P.2d 828 (1981). It must be shown that prejudicial publicity had the probable effect of precluding a trial by fair and impartial jurors before a change of venue is required. *Id.* Appellant failed to make such a showing. The jury selection process took only a relatively short amount of time. Forty persons were called and only four of those had formed an unqualified opinion as to the defendant's guilt. The probability that the members of the jury were prejudicially affected by pretrial publicity is not supported by a review of the record.

In a similar vein, appellant asserts that the trial court erred in its denial of his motions for change of venue and a continuance because of the pretrial publicity. We find no evidence to support his position and the trial court's determination in this regard will not be upset.

Appellant asserts error because the trial court failed to have the jury sequestered. However, the record does not show either juror misconduct or a failure of the jury to follow the admonitions given by the trial judge. *Id.* at 840.

Appellant asserts that the trial court improperly refused to permit voir dire of each individual juror. The responsibility for conducting voir dire examination lies with the trial judge. The court in its discretion may permit counsel to examine an individual juror when good cause appears. *State v. Greenawalt*, — Ariz. —, 624 P.2d 828, 839-840 (1981); *State v. Smith*, 114 Ariz. 415, 561 P.2d 739 (1977); Rule 18.5(d), Rules of Criminal Procedure, 17 A.R.S.

In the case at bar, the trial judge advised counsel for the appellant that he would be allowed to specifically question prospective jurors once the voir dire examination was completed by the trial judge. The trial judge extensively questioned the prospective jurors in the areas of pretrial publicity, awareness of the appellant's back-

ground, any alleged statements attributed to the appellant, and the existence of any prior opinions as to guilt. The trial judge then permitted appellant's counsel to ask questions, and eight of the prospective jurors were questioned by him. We do not understand how the appellant was prejudiced by this procedure. The method adopted by the trial court adequately accomplished the purpose of voir dire to determine whether prospective jurors can fairly and impartially decide the case. *State v. Greenawalt*, — Ariz. —, 624 P.2d 828, 840 (1981).

Appellant urges that he was deprived of a fair trial guaranteed by the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution because of the pretrial publicity in this matter. He urges first that the newspapers engaged in a practice of "unchecked and irresponsible journalism" creating a carnival-like atmosphere, precluding the possibility of a fair trial as was condemned in *Sheppard v. Maxwell*, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed.2d 600 (1966).

In *State v. Smith*, 123 Ariz. 231, 599 P.2d 187 (1979), we recognized that the mere dissemination of biased news accounts may so influence the community as to pervade the proceedings and that prejudice would be presumed. However, there still must be shown circumstances so outrageous that it can be concluded the trial was conducted in less than a solemn and sober manner. *State v. Greenawalt, et al*, 626 P.2d 118 (1981); see *Murphy v. Florida*, 421 U.S. 794, 95 S.Ct. 2031, 44 L.Ed.2d 589 (1975). The record fails to disclose the existence of such outrageous circumstances. It does not appear that the trial was conducted in a manner other than solemn and sober. In the absence of circumstances from which prejudice can be presumed, appellant must show that specific publicity of a prejudicial nature reached the prospective jurors. *State v. Greenawalt, et al*, — Ariz. — 626 P.2d 118 (1981); *State v. Smith*, 116 Ariz. 381, 569 P.2d 817 (1977).

An examination of the record leads to the conclusion that during the occurrence of the events in question, especially after the escape from the state prison and after the appellant's implication in the murder of the Lyons family, press coverage was very extensive. While the hunt for the Tisons was in progress, appellant and his accomplices were the subject of numerous front page articles. However, the degree of press interest lessened after the discovery of the body of Gary Tison, the group's reputed leader. The record does not show that prior to the trials of Randy Greenawalt and appellant and his brother, Raymond, the press coverage rose to the level it occupied at the time the offenses occurred. But were it otherwise, the magnitude of the publicity will not alone result in a reversal. There must be a showing by the accused of some prejudicial effect of the publicity. *State v. Greenawalt*, — Ariz. —, et al, 626 P.2d 118, (1981).

The presence of publicity-caused jury prejudice can usually be found by an examination of two common factors: the nature of the publicity and the difficulty in selecting a jury. Neither factor is present to the extent that would tend to indicate the presence of prejudice. The pretrial publicity not only tapered off near the appellant's trial date, but, in addition, only a few of the many newspaper articles that were written could be said to be inflammatory. Of those, the articles appearing on the editorial page of the *Arizona Republic*, a Phoenix newspaper, were the most incendiary. Only one juror who participated in the deliberations read the *Arizona Republic*, and that person stated that he had not formed any preconceived opinions as to the appellant's guilt.

The relative ease with which the jury selection process took place is also indicative of a lack of prejudice. Only 40 prospective jurors were needed to fill the requisite panel of 34. Of these, only four were excused by the court for their fixed opinion of the appellant's guilt. Of the 34 on the panel, none had formed any preliminary opin-



ions about the case, nor had any of them heard of any alleged statements made by appellant, his brother, or Randy Greenawalt, nor did those on the panel possess any knowledge of the prior history and background of appellant. Unless there are objective indications of jurors' prejudice, we will not presume its existence.

In his sixth assignment of error, appellant claims that the trial court erred in failing to suppress three incriminating statements which were made by appellant subsequent to his capture and while incarcerated at the Pinal County Jail in Florence, Arizona. He urges several grounds for the exclusion of these statements, including assertions that they were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), and the Sixth Amendment right to counsel. We will not, however, concern ourselves with these matters because of the failure to raise these issues at the suppression hearing held in the court below. Issues concerning the suppression of evidence which were not raised in the trial court are waived on appeal. *State v. Griffin*, 117 Ariz. 54, 570 P.2d 1067 (1977); see Rule 16.1(c), Rules of Criminal Procedure, 17 A.R.S. The preclusion of issues applies to constitutional objections as well as statutory objections because an adherence to procedural rules serves a legitimate state interest in the timely and efficient presentation of issues. *State v. Griffin*, supra; *State v. Neese*, 126 Ariz. 499, 616 P.2d 959 (App. 1980); see *Michigan v. Tyler*, 436 U.S. 499, 512, n. 7, 98 S.Ct. 1942, 1951, n. 7, 56 L.Ed.2d 486 (1978). When a defendant chooses legal representation, the power of decision is delegated to the lawyer, see Standard 4-5.2, Standards for Criminal Justice, and his decisions may be binding upon the defendant, even though rights of constitutional dimensions have been lost. See *Wainwright v. Sykes*, 433 U.S. 72, 91, 97 S.Ct. 2497, 2509, 53 L.Ed.2d 594 (1977) (Burger, C.J., concurring); *Estelle v. Williams*, 425 U.S. 501, 96 S.Ct. 1691, 48 L.Ed.2d 126 (1976); *Henry v. Mississippi*, 379 U.S. 443, 85

S. Ct. 564, 13 L.Ed.2d 408 (1965). Thus, the challenge to the admissibility of the statements on the grounds of involuntariness preserved for review only that issue.

An examination of the voluntariness of the statements given by appellant requires a further elaboration of the facts.

On August 11, 1978, in the early morning hours, a Ford van approached a roadblock set up near Casa Grande, manned by a number of law enforcement officers. When the officers attempted to check the vehicle, gun shots were fired from it. Thereafter, a high speed chase ensued for eight to ten miles, with gunfire coming from the rear of the van. At a second roadblock, the van was stopped after running off the highway. The officers saw several of the occupants fleeing into the desert, and upon searching the van found Donald Tison, who was unconscious with a gunshot wound in his head. Later, with the assistance of helicopters equipped with search lights and aerial flares, the officers located and arrested appellant, his brother Raymond Tison and Randy Greenawalt hiding a short distance from the van. After being stripped, searched, handcuffed and shackled, they were placed in the bed of a pickup truck while the officers continued their search for Gary Tison.

At 5:30 a.m., appellant was placed in a police vehicle along with three officers (Harville, Solis and Martinez). At that time, appellant was nude except for a blanket which had been put over him. Appellant had blood spattered on his chest, apparently from the gunshot wound sustained by Donald Tison. Appellant was advised of his *Miranda* rights and asked about his physical condition. He responded that he was all right and did not need a doctor. During this time he was neither threatened nor intimidated in any manner. There was some evidence that a statement was made to the appellant that he would be taken back and shown his brother, Donald. Appellant was questioned for a period of approximately ten to fifteen minutes. The interview terminated when ap-

pellant failed to disclose the information which the officers were attempting to obtain.

The second interview was conducted by Department of Public Safety Officers Salyer and Sanchez at approximately 7:00 a.m. The appellant was still nude, but in possession of the blanket. He was placed in the back seat of a vehicle in which the two officers sat in the front seat. Appellant was advised of his *Miranda* rights and "he just shrugged his shoulders" and began to talk. Officer Salyer's testimony at the trial indicates what transpired:

"A. Well, first I asked Ricky if he was okay, if he was hurt, if he needed any medical attention. He stated no. I offered him some coffee, something to eat. Again he refused.

Q. [sic]: My one concern was to ascertain if Gary Tison was in fact with the group and the location of the girl that hadn't been found.

As I talked to Ricky about the—he first stated all they did was break the old man out. As I got to the point about the white Lincoln he became very excited. Said he didn't want to talk anymore. Didn't know anything about the Lincoln.

At this time I started to get out of the car when someone came by and mentioned something about footprints.

Q. Did you return to the car at that time?

A. I hadn't left the car.

Q. What did you say at that time?

A. I told Ricky that there had been footprints found around the scene of the Lincoln and I asked him about what types shoes he was wearing. Again he became excited, said, 'All I know is that me and my brothers didn't shoot those people.'

Q. What was your next statement?

A. I said, 'Okay, I didn't say that you shot those people. I'm just trying to find out what happened.'

I said, 'Let's just start at the beginning from when the thing first started and just go from there.'"

Appellant then related in some detail their activities, including a description of the murders of the Lyons family.

The third statement of appellant which was introduced at his trial occurred at the Pinal County Jail on the same day at approximately 12:40 p.m. Tom Brawley, of the Coconino County Sheriff's Office, questioned appellant. At this time he was neither wearing clothes nor did he have a blanket. He was advised of his *Miranda* rights and was not threatened in any manner. Brawley testified:

"A. I asked if he wanted to make a statement.

Q. What was his response?

A. He said that he didn't at that time.

Q. What happened next?

A. I then told him that we had a missing person in the case that we would like to find.

Q. What was his response to that?

A. He replied, 'Well, that's a bunch of shit about the girl.' He said, 'We didn't —' or he said, 'I'm not a sex fiend.' He said, 'We didn't take her with us. We left her there at the car.'"

Counsel for appellant at the hearing on a motion to suppress urged that the statements were inadmissible because of their involuntary nature.

In Arizona, confessions and admissions are *prima facie* involuntary and the burden is on the State to show by a preponderance of the evidence that they were freely and voluntarily made and not the product of physical or psychological coercion. The trial court's determination of the admissibility of a confession will not be disturbed



in the absence of clear and manifest error. *State v. Hall*, 120 Ariz. 454, 586 P.2d 1266 (1978).

In determining the voluntariness of a confession, the trial judge must assess the totality of the circumstances surrounding the confession and decide whether the free will of the defendant has been overborne. *Schneckloth v. Bustamonte*, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973); *State v. Hall*, supra. "A confession will be found involuntary where the court, considering all the circumstances, determines that one of the following exists: (1) impermissible conduct by police, (2) coercive pressures not dispelled, or (3) confession derived directly from prior involuntary statement." *State v. Gretzler*, 126 Ariz. 60, 82, 612 P.2d 1023 (1980). None of the factors enumerated in *Gretzler* exist in the present case. We find no clear and manifest error in the trial court's denial of the appellant's motion to suppress.

An examination of the circumstances surrounding the giving of appellant's statements supports the trial court's conclusion that they were voluntary. He chose to speak on three separate occasions after having been advised of his *Miranda* rights. The law enforcement officers who conducted the interrogations never threatened or coerced him, nor did they promise any benefits from his cooperation with them. The questioning lasted for only short periods of time. The officers provided appellant with a blanket and offered him medical attention and food. Considering all the circumstances, the facts do not indicate that the statements were involuntary, but, rather, that they were the product of the appellant's exercise of free will.

Appellant challenges an instruction given by the trial judge which purported to describe conspiracy and the liability of persons in a conspiracy. This is the same instruction quoted in *State v. Greenawalt*, — Ariz. —, 624 P.2d 828, 846-847 (1981). There we found no reversible error in the giving of the instruction even though, as here, the appellant had never been indicted or

prosecuted for conspiracy. We recognized that the instruction stated the liability imposed by Arizona's criminal responsibility statute, A.R.S. § 13-139 (now A.R.S. § 13-301 et seq.):

"All persons concerned in the commission of a crime \* \* \* whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission \* \* \* are principals in any crime so committed."

Since appellant here was not convicted of conspiracy, his various arguments that the instruction did not reflect the law of the substantive crime of conspiracy or that there was insufficient evidence to warrant a conspiracy instruction are irrelevant. Substantial evidence showed appellant's participation in the prison breakout, the robbery and kidnapping of the Lyonses and Theresa Tyson and the effort to avoid capture.

Arizona's statute A.R.S. § 13-542 provided:

"A murder \* \* \* which is committed in avoiding or preventing lawful arrest or effecting an escape from legal custody, or in perpetration of or attempt to perpetrate \* \* \* robbery \* \* \* [or] kidnapping \* \* \* is murder of the first degree."

The jury could have concluded from the evidence that the murders of the Lyons family and Theresa Tyson were committed either in avoiding lawful arrest, effecting an escape from legal custody, or in the perpetration of robbery or kidnapping. By force of A.R.S. § 13-139, appellant was therefore a principal in the homicides.

As we said in *State v. Greenawalt*, — Ariz. —, 624 P.2d at 848:

"While the requested instruction involving conspiracy added nothing to the State's theory of responsibility for the murders, under the felony murder

statute, A.R.S. § 13-452, neither do we think it misled or confused the jury."

Appellant argues that due process requires that the conspiracy be charged in the indictment. It is true that there is a fundamental right to reasonable notice of the specific charge against an accused. *Cole v. State of Arkansas*, 333 U.S. 196, 68 St.Ct. 514, 92 L.Ed. 644 (1948). Appellant was informed of the crimes of which he could be convicted. There is no requirement that appellant receive notice of how his responsibility for those offenses was to be proved. See *Hunter v. State of Arizona*, 47 Ariz. 244, 55 P.2d 310 (1936); *State v. Mendibles*, 25 Ariz.App. 392, 543 P.2d 1149 (1975); *People v. Pike*, 22 Cal.Rptr. 664, 372 P.2d 656, 666 (1962); *People v. Remiro*, 89 Cal.App.3d 809, 153 Cal.Rptr. 89 (1979).

Appellant next assigns as error the felony-murder instructions given by the court. First, appellant asserts that the trial judge failed to detail the "elements" of preventing lawful arrest or effecting an escape from legal custody" contained in former A.R.S. § 13-452.

Appellant never requested a more detailed explanation of the terms and never objected to the instruction given. Any error in instructions not objected to is waived unless the error is fundamental. *State v. Dickey*, 125 Ariz. 163, 169, 608 P.2d 302 (1970); see Rule 21.3(c), Rules of Criminal Procedure, 17 A.R.S. Where the trial court fails to instruct on a matter vital to the rights of a defendant, such an omission constitutes fundamental error. *State v. Miller*, 120 Ariz. 224, 585 P.2d 244 (1978); *State v. Hardy*, 112 Ariz. 205, 540 P.2d 677 (1975); *State v. Evans*, 109 Ariz. 491, 512 P.2d 1225 (1973). In *State v. Smith*, 114 Ariz. 415, 420, 561 P.2d 739 (1977), we held fundamental error to be "error of such dimensions that it cannot be said it is possible for a defendant to have had a fair trial."

Appellant incorrectly terms the "avoiding or preventing lawful arrest" and "escape from legal custody" contained in the first degree murder statute, former A.R.S.

§ 13-452, as "underlying felonies." That statute provided in its entirety:

"A murder which is perpetrated by means of poison or lying in wait, torture or by any other kind of wilful, deliberate or premeditated killing, or which is committed in avoiding or preventing lawful arrest or effecting an escape from legal custody, or in the perpetration of, or attempt to perpetrate, arson, rape in the first degree, robbery, burglary, kidnapping or mayhem, or sexual molestation of a child under the age of thirteen years, is murder of the first degree. All other kinds of murder are of the second degree."

In *State v. Greenawalt*, — Ariz. —, 624 P.2d 828 (1981), we recognized that the "arrest" and "escape" are not underlying felonies, but, rather, specified conduct. There we said:

"\* \* \* the State *must* present evidence sufficient to show that the murders were committed in 'avoiding or preventing lawful arrest or effecting an escape from legal custody,' or any of the other proscribed acts. Where the accused is charged with first degree murder, based upon the felony-murder statute, which itself requires a showing of another underlying crime or specified conduct *as an element* of the offense charged, evidence of the proscribed conduct cannot be precluded as being irrelevant or prejudicial." 624 P.2d at 844. (Emphasis in original.)

Put simply, no elements of the underlying crimes of "avoiding or preventing lawful arrest or effecting an escape from legal custody" were required since the terms as used in A.R.S. § 13-452 are not underlying felonies. Still the question remains whether the instruction sufficiently described the terms so as not to amount to fundamental error. *People v. McGhee*, 67 Mich.App. 12, 239 N.W.2d 741 (1976); see *United States v. Brown*, 616 F.2d 844 (5th Cir. 1980).



The underlying conduct which appellant claims was not sufficiently explained was never disputed. Appellant does not argue that the murders of the Lyons family and Theresa Tyson occurred in any manner other than in an effort to avoid arrest. Any prejudice to appellant from the court's failure to give a more particularized instruction is difficult to conceive. The conduct is, to a great extent, self-defining and a further explanation would have assisted the jury very little. It does not appear that the jury was misled. We find no fundamental error.

The appellant argues that the trial court erred in refusing to give an instruction on the termination of the underlying felonies or conduct regarding the application of the felony murder rule. He contends that the State has not shown any causal connection between the deaths and the crimes or conduct in this matter which underlie the application of the felony murder rule. We think the appellant's position ignores the undisputable facts in this case. By the appellant's own statements, it is clear the murders occurred in the attempt to avoid lawful arrest and contemporaneously with the armed robbery and kidnapping of the Lyons family and Theresa Tyson. Thus, the murders took place during a series of events sufficiently causatively connected to the underlying crimes or conduct to support the instruction given. See *State v. Gretzler*, 126 Ariz. 60, 89-90, 612 P.2d 1023 (1980); *State v. Richmond*, 114 Ariz. 186, 560 P.2d 41 (1976).

In his twelfth assignment of error, appellant argues that the trial court failed to instruct the jury on second degree murder. In *State v. Greenawalt*, — Ariz. —, 624 P.2d 828, 846 (1981), we held that the requested second degree murder instruction was properly refused because the evidence supported only the conclusion that the murders were committed during conduct specified in or in the perpetration of an offense enumerated in A.R.S. § 13-452. No evidence supported a second degree murder instruction. We likewise so hold here.

Appellant urges that the trial court erred in giving a flight instruction when the only evidence of flight was the appellant's capture a few hundred yards from the van in which he was riding when apprehended. It is the appellant's position that such evidence of flight manifested no consciousness of guilt on the part of appellant regarding the present charges, but bore relation only to the assaults occurring at the scene of the roadblock. We find no error in the trial court's giving of the flight instruction for the following reasons. A flight instruction is permissible when evidence exists of open flight or of concealment. *State v. Clark*, 126 Ariz. 428, 434, 616 P.2d 888 (1980). "Evidence concerning flight is admitted because flight raises an inference which, when taken together with other evidence, points to a consciousness of guilt on the part of a defendant." *State v. Loyd*, 126 Ariz. 364, 367, 616 P.2d 39, 42 (1980).

In the instant case, the record is replete with evidence of both open flight and concealment. After the homicides, appellant with his companions first stole the Lyonses' Mazda and painted it a different color. They then went to Flagstaff and changed to another vehicle, a pickup truck. Before leaving Flagstaff, they partially buried the Mazda and covered it with pine branches. Subsequently, they abandoned the pickup truck and obtained a van. When the appellant and the other members of the group were approached by law enforcement officers at the first roadblock near Casa Grande, they responded with gunfire and attempted to escape. A chase ensued with the occupants of the van shooting at the pursuing law enforcement vehicles. Appellant, his brother Raymond and Randy Greenawalt were taken into custody after being discovered hiding in the desert. It can reasonably be concluded that such conduct evidences a consciousness of guilt of prior criminal activities. Appellant's attempt to characterize their flight as only a flight from the events taking place at the roadblock does not explain their vio-

lent behavior upon confrontation by peace officers, which of itself was part of the flight.

Appellant asserts that the trial court committed error in denying appellant's request for transcripts of Randy Greenawalt's trial, which was conducted immediately prior to appellant's. Greenawalt, an accomplice of appellant, was charged with the same substantive charges made against appellant.

The United States Supreme Court in *Britt v. North Carolina*, 404 U.S. 226, 92 S.Ct. 431, 30 L.Ed.2d 400 (1971), held that an indigent defendant must be provided with transcripts of a prior trial that ended in a mistrial without showing a specific need. The necessity of the transcripts to an effective defense was to be presumed. But in an analogous situation, the Court through Justice Rehnquist said:

"\* \* \* the fact that a particular service might be of benefit to an indigent defendant does not mean that the service is constitutionally required. The duty of the State under our cases is not to duplicate the legal arsenal that may be privately retained by a criminal defendant in a continuing effort to reverse his conviction, but only to assure the indigent defendant an adequate opportunity to present his claims fairly in the context of the State's appellate process." *Ross v. Moffit*, 417 U.S. 600, 616, 94 S.Ct. 2437, 2447, 41 L.Ed.2d 341 (1974).

Hence, when the indigent defendant requests a transcript of a co-defendant's trial, its necessity to an effective defense is not presumed. Rather, a defendant must show specific need. *State v. Razinha*, 123 Ariz. 355, 599 P.2d 808 (App. 1979). In distinguishing *Britt*, the court in *State v. Razinha* said:

"The reason for distinguishing between the *Britt* situation, a prior mistrial, and a situation analogous to the one here, a trial of a co-defendant, is that the witnesses may not be common. Even if they are,

their testimony as to the co-defendant may differ greatly from their proposed testimony concerning the defendant's part in the crime, depending upon the circumstances of each case." 123 Ariz. at 358.

While the witnesses were the same in Greenawalt's and appellant's trials, there must still be a showing of specific need. No such need was established. Appellant did not and does not on appeal elaborate on how the transcripts would have assisted in either trial preparation or impeaching witnesses.

More important, as stated in *State v. Little*, 123 Ariz. 427, 429, 600 P.2d 40 (App. 1979):

"*Britt* does not stand for the proposition that an indigent defendant is absolutely entitled to a transcript of the prior proceedings under all circumstances. It is only where the transcript is available to others for a price that the principles of *Britt* apply. Here, the transcript was not available to anyone. We do not believe that under the circumstances the trial court was required to delay the trial some unknown time in the future in order to secure the transcript."

Randy Greenawalt's trial was completed on February 16, 1979. Appellant's trial commenced February 20, 1979 and ended February 27. It appears the transcripts of Greenawalt's trial were not prepared and available until May 4, 1979. The transcripts not being available to others, they were not required to be provided to appellant.

Appellant contends that the sentences of life imprisonment without the possibility of parole he received on the kidnapping convictions were illegal in the absence of evidence that he personally injured the victims.

A.R.S. § 13-492(C) provides:

"1. If the person subjected to the acts mentioned in subsection A or B suffers serious bodily harm inflicted by the person found guilty, the person found



guilty shall be punished by life imprisonment without possibility of parole.

2. If the person subjected to any acts mentioned in subsection A or B does not suffer serious bodily harm the person found guilty shall be punished by imprisonment in the state prison from twenty to fifty years without possibility of parole until the minimum sentence has been served." (Emphasis added.)

If subsection (1) is read literally, § 13-492(C) provides no punishment where the victim is bodily harmed but the particular defendant is not shown to have personally inflicted the harm. The State's position is that the legislative intent in the enhancement of sentence was to deter kidnappers from injuring their victims by distinguishing between injury and non-injury cases, not between injuring and non-injuring kidnappers. We agree, and hold that the sentence enhancement in A.R.S. § 13-492(C) (1) comes into play whenever a kidnapping victim is bodily harmed, even though the particular defendant convicted of kidnapping did not personally inflict the harm.

Before addressing the appellant's challenge to the determination by the sentencing judge that the sentences of death were appropriate for the defendant on these facts, the appellant has raised various issues concerning the constitutionality of our death penalty statute. Specifically, he asserts that: (1) the death penalty constitutes cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution; (2) the decision in *State v. Watson*, 120 Ariz. 441, 586 P.2d 1253 (1978), is unconstitutional because the mitigation provisions of the statute are not severable from the remainder of the statute; (3) the decision in *State v. Watson*, supra, is a prohibited exercise of legislative power and constitutes a judicial enactment of a bill of attainder prohibited by Article I, Section 10 of the United States Constitution; (4) the death penalty as recreated by *State v. Watson*, supra, will be imposed wan-

tonly, arbitrarily and freakishly because it contains no ascertainable standards for the sentencing body to measure the relative weights of the aggravating and mitigating circumstances; and (5) the statute improperly allocates the burden of proof in requiring the defendant to prove the existence of mitigating factors and not requiring the prosecution to establish aggravating circumstances beyond a reasonable doubt. These issues have been resolved in *State v. Greenawalt*, — Ariz. —, 624 P.2d 828 (1981), and it is unnecessary to reconsider them at this time.

Appellant complains that the trial court erred in determining the existence of three aggravating circumstances from which it concluded to impose a death sentence. By A.R.S. § 13-454(D) and (E) (now A.R.S. § 13-703(E) and (F)), the court shall impose a sentence of death if it finds one or more of the aggravating circumstances enumerated in subsec. (E) and that there are no mitigating circumstances "sufficiently substantial to call for leniency. A.R.S. § 13-454(E) provides:

"Aggravating circumstances to be considered shall be the following:

1. The defendant has been convicted of another offense in the United States for which under Arizona law a sentence of life imprisonment or death was imposable.
2. The defendant was previously convicted of a felony in the United States involving the use or threat of violence on another person.
3. In the commission of the offense the defendant knowingly created a grave risk of death to another person or persons in addition to the victim of the offense.
4. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

5. The defendant committed the offense as consideration for the receipt or in expectation of the receipt, of anything of pecuniary value.

6. The defendant committed the offense in an especially heinous, cruel, or depraved manner."

The appellant complains that the sentencing court found the presence of an aggravating circumstance pursuant to A.R.S. § 13-454(E)(3). He argues that the court erred in finding this because its applicability is limited to those factual situations where a grave risk of death has been created which threatens persons other than the intended victims. In essence, the appellant is urging that the simultaneous multiple murders where all the victims met their deaths cannot be construed to result in a finding of aggravation consistent with this statutory provision. We, too, have trouble rationalizing the aggravating circumstance set forth in A.R.S. § 13-454(E)(3) (now A.R.S. § 13-703(F)(3)) with the facts of this case.

The finding by the sentencing court of the existence of this aggravating circumstance does have some support in the evidence. The body of John Lyons was found near the Lincoln automobile in which the bodies of Donnelda and Christopher Lyons were found. They were close enough together to suggest that the shooting of any one of the three created a grave risk of danger to the other two, particularly in the case of Donnelda and Christopher Lyons. But, taking all the facts into consideration, there is a suggestion that all four were ruthlessly and intentionally murdered. We think the evidence could be viewed in the light of the latter hypothesis and therefore we cannot conclude that § 13-454(E)(3) has any application to this case.

The sentencing court found the existence of the aggravating circumstances in A.R.S. § 14-454(E)(5) (now A.R.S. § 13-703(F)(5)):

"The defendant committed the offense as consideration for the receipt, or in expectation or the receipt, of anything of pecuniary value."

Appellant's position is that in conjunction with (E)(4), the legislative intent was to apply this section only to the "hired gun" or "contract killer." However, we have previously held to the contrary in *State v. Clark*, supra. There, we approved the finding of an aggravating circumstance upon evidence of a robbery-murder. We found that the multiple murders in that case were committed for financial gain because the defendant had stolen money, credit cards, two diamond rings and an automobile. *Id.* at 436; see also *State v. Madsen*, 125 Ariz. 346, 609 P.2d 1046 (1980). Here, the appellant's statements along with other evidence revealed that the Lyonses' vehicle was stopped after the Lincoln became disabled. The Lyonses' automobile and various items of personal property were stolen. According to appellant's statements appearing in a psychological evaluation offered in evidence at the mitigation hearing, "the whole purpose was to obtain an automobile."

The appellant also challenges the sentencing court's finding that the offenses were committed "in an especially heinous, cruel, or depraved manner." A.R.S. § 13-454(E)(6) (now A.R.S. § 13-703(F)(6)). He asserts that the murders were carried out by the infliction of numerous shotgun blasts causing instantaneous death to all of the victims except Theresa Tyson, and that no additional facts exist which set this first degree murder apart from the usual one. In the special verdict, the sentencing judge said:

"This finding is based on the evidence that the victims' vehicle was stopped, they and the vehicle were moved from the highway into the desert, and some, if not all, of the victims were placed in the Lincoln automobile where at least Donnelda Lyons and Christopher Lyons were murdered. Clearly the fatal wounds of John Lyons and Theresa Tyson were inflicted in or near the Lincoln. The conclusion is inescapable that all the victims were moved from the highway under force and, considering the arsenal



possessed by the defedants [sic] and the manner in which the victims were killed, very probably at gun point. Necessarily John Lyons, Donnelda Lyons and Theresa Tyson had time to become and must have become apprehensive about their welfare and that of Christopher at first and ultimately about all their lives before the fatal shots were fired. The stress and fear each must have initially experienced had to have grown to immense, almost unimaginable proportions before they were murdered. And it is not unreasonable to conclude that one or more of the victims witnessed the murder of the others before his or her turn came and that very likely, from where they were found, Theresa Tyson and John Lyons were those witnesses. The emotions certainly experienced by John Lyons, Donnelda Lyons and Theresa Tyson in those last minutes of their lives were the equivalent of the severest physical torture.

This finding is also based on the senselessness of the murders. It was not essential to the defendants' continuing evasion of arrest that these persons be murdered. The victims could have easily been restrained sufficiently to permit the defendants to travel a long distance before the robberies, the kidnappings and the theft were reported. And in any event the killing of Christopher Lyons, who could pose no conceivable threat to the defendants, by itself compels the conclusion that it was committed in a depraved manner."

In *State v. Ceja*, 126 Ariz. 35, 39, 612 P.2d 491 (1980), we explained the meaning of the terms embraced by (E) (6) :

"The aspect of cruelty involves the pain and the mental and physical distress visited upon the victims. Heinous and depraved go to the mental state and attitude of the perpetrator as reflected in his words and actions."

*Accord State v. Bishop*, — Ariz. —, 622 P.2d 478- (1980); *State v. Clark*, *supra*. For a finding of cruelty, we have required that evidence of the suffering or pain experienced by the victims be apparent. *State v. Clark*, *supra*; *State v. Ceja*, *supra*. In the instant case, no evidence was offered to establish pain or suffering by the victims other than the medical testimony indicating that Theresa Tyson did not die instantly, but bled to death. However, the sentencing judge surmised that the victims must have experienced a great degree of mental pain by being moved from the highway at gunpoint in apprehension of the possibility of eventually being murdered and through witnessing the commission of the murders on the other family members. Such a conclusion is reasonable on these facts, but we do not rest our approval of the findings of (E) (6) alone on the existence of cruelty.

The evidence supports a finding that the murders were committed in a heinous and depraved manner. The senselessness of the murders, given the inability of the victims to thwart the escape, especially in such an isolated area, and the fact that a young child, less than two years old, who posed no threat to the captors, was indiscriminately shot while in the arms of his mother, compels the conclusion that the actual slayers possessed a shockingly evil state of mind. Less violent alternatives which would have served their purposes in preventing their detection by the authorities were obviously available. But they chose to slaughter an entire family and Theresa Tyson. The crimes were well within the plain meaning of the legislative language "especially heinous \* \* \* or depraved \* \* \*."

Appellant also argues that this aggravating circumstance, "especially heinous, cruel or depraved," was improperly found by the sentencing court because A.R.S. § 13-454 (E) (6) contemplates active personal involvement in the homicides and the only evidence before the court indicated that the appellant did not personally participate although he was present at the scene of the shooting.

We reject this notion and construe the statute to mean that a defendant who is actually present at the homicide, having actively participated in all the events leading thereto, will not be heard to deny that he was not causally connected with the crime at the highest level and in the fullest sense. But for the appellant's assistance from the moment he and his brothers furnished guns to Gary Tison and Greenawalt, the victims would not have died.

Further, we believe that the lower court mistakenly concluded that A.R.S. § 13-454(E)(1) and (2) should not apply.

Appellant was convicted of seventeen counts of assault with a deadly weapon for his participation in the events taking place at the prison and at his capture in Pinal County. As a result of these convictions, appellant received concurrent sentences on each count of 30 years to life. See *State v. Greenawalt, et al*, — Ariz. —, 626 P.2d 118 (1981). The trial court's belief that the charges could have been brought in a single information or indictment along with the charges in this case unduly limits the statutory reach of the legislative act. The criminal offenses which occurred in Pinal County constitute separate offenses. They arose out of different incidents which had taken place at the prison and at the roadblock. These convictions were punishable by life imprisonment and, therefore, should have been considered aggravating circumstances under (E)(1).

The convictions were also an aggravating circumstance under (E)(2): appellant "was previously convicted of a felony in the United States involving the use or threat of violence on another person." The felony convictions of assault with a deadly weapon necessarily involved the type of violent behavior against which this aggravating circumstance is directed. That some of the offenses occurred subsequent in time to the offenses which are now upon review does not alter our conclusion. The consideration of these convictions as aggravating circumstances regardless of the time of their occurrence serves

the legitimate purpose of the statute to evaluate the character and propensities of the appellant. *State v. Steelman*, 126 Ariz. 19, 612 P.2d 475 (1980); *State v. Valencia*, 124 Ariz. 139, 602 P.2d 807 (1979). See also *State v. Superior Ct. of State of Ariz., Etc.*, — Ariz. —, 627 P.2d 1081 (1981).

We do not, however, base our decision on subsections (E)(1) and (2), being satisfied that subsections (E)(5) and (6) fully support the death sentences.

Appellant argues that in addition to the mitigating circumstances found by the trial judge (age, minimal prior criminal activity and convictions based on the felony murder rule), other mitigating circumstances exist. Appellant claims the psychological reports on his mother and himself establish the strong, manipulative influence his father, Gary Tison, had on him. We, however, conclude the report does not support this argument. While Dr. MacDonald, the psychologist, believed Gary Tison applied subtle and continual influence on appellant, he concluded appellant suffered from no thought disorders and:

"became involved in these events on his own volition, planning it carefully, not under the influence of drugs or alcohol, *not under any threat or undue persuasion* and certainly not while in a state of psychosis or high mental disturbance." (Emphasis added.)

The facts also do not support appellant's contention. There was substantial evidence that appellant along with his brothers planned the escape from the beginning and that he continued with his father and Greenawalt both before and after the murders, even though there were obvious opportunities to dissociate himself from them.

Appellant also argues as mitigating circumstances that numerous persons wrote letters on his behalf, pointing out his prior non-violent character, and the fact that he did not actually commit the murders. However, we are not impressed. The evidence from beginning to end establishes the ruthless character of the participants in the



offenses. Appellant planned the escape for months with his brothers. During that time they gathered together an arsenal of lethal weapons which were used against others during the prison breakout. Later the same weapons were used by appellant and his companions to kidnap, rob, and finally murder the Lyons party. Appellant obviously possessed the capacity to engage in violent behavior when it suited his preference.

It is argued that appellant's participation in the murders was relatively minor and that he should not be sentenced to death since he did not specifically intend the victims' deaths. The trial court, however, found as to both Ricky and Raymond Tison:

"Neither defendant's participation was relatively minor. Although each of the defendants has stated the murders were actually committed by Gary Tison and Randy Greenawalt, the participation of each in the crimes giving rise to the application of the felony murder rule in this case was very substantial. Even accepting as true their statements of who actually fired the fatal shots, it cannot be said that their participation was relatively minor. By their own statements their participation up to the moment of the firing of the fatal shots was substantially the same as that of Randy Greenawalt and Gary Tison. At the moment of the firing their participation may not have equalled that of Randy Greenawalt and Gary Tison, but their standing and watching then [sic] while armed themselves cannot be characterized as relatively minor participation."

The record establishes that both Ricky and Raymond Tison were present when the homicides took place and that they occurred as part of and in the course of the escape and continuous attempt to prevent recapture. The deaths would not have occurred but for their assistance. That they did not specifically intend that the Lyonses and Theresa Tyson die, that they did not plot

in advance that these homicides would take place, or that they did not actually pull the triggers on the guns which inflicted the fatal wounds is of little significance. Ricky and Raymond Tison associated themselves with others who were willing to and had in the past committed savage, homicidal acts. They were palpably indifferent to the consequences of their lawless conduct. They will not be relieved of the punishment the law exacts where the criminal association was formed, supported and carried out irrespective of the probable consequences that human life would be taken to ensure the success of the criminal enterprise. We assent to the retributive principle of justice which demands that persons be punished in proportion to their personal involvement in the crime, focusing the inquiry on the harm which may fairly be attributed to a participant's conduct. See U.S. Const. amend. VIII. This is not a case of minimal assistance. *Compare* Lockett v. Ohio, 438 U.S. 586, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978).

If a crime is caused to occur by an accessory but the accessory is not the actual perpetrator, this fact will not alone constitutionally prevent punishment of the accessory to the same extent as the perpetrator since both have caused the death to occur. See Dressler, *The Jurisprudence of Death by Another: Accessories and Capital Punishment*, 51 U.Colo.L.Rev. 17, 54 (1979). The extent of the accessory's participation was substantial. As a minimum, the Tison brothers stood by, armed with guns, while their companions slaughtered the Lyonses and Theresa Tyson. The mitigating circumstances are not "sufficiently substantial to call for leniency."

Judgments of conviction and sentences affirmed.

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FRED C. STRUCKMEYER, JR.  
Chief Justice

CONCURRING:

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WILLIAM A. HOLOHAN, Vice Chief Justice

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JACK D. H. HAYS, Justice

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JAMES DUKE CAMERON, Justice

GORDON, Justice (Specially Concurring):

Although I would affirm all the judgments and sentences in this case, I still feel as I did in State v. Clark, 126 Ariz. 428, 616 P.2d 888 (1980) that when A.R.S. § 13-454(E)(4) and (5) are read together it is clear that the Legislature intended those sections to apply only to situations involving a homicide committed by a hired killer. I do not believe that they were intended to be applied to homicides occurring in the course of robberies. To that extent I would disagree with the majority.

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FRANK X. GORDON, JR.  
Justice



IN THE SUPREME COURT  
OF THE STATE OF ARIZONA  
En Banc

Supreme Court No. 4624-2-PC  
Yuma County Superior Court No. 9299

STATE OF ARIZONA, APPELLEE

v.

RAYMOND CURTIS TISON, APPELLANT

Filed: October 18, 1984

Appeal from the Superior Court of Yuma County  
The Honorable Douglas W. Keddie, Judge

RELIEF DENIED

OPINION

HAYS, Justice

Petitioner, Raymond Tison, was convicted of four counts of first degree murder, two counts of armed robbery, three counts of kidnapping and one count of theft of a motor vehicle. Petitioner was sentenced to death for each first degree murder conviction. On direct appeal, this court affirmed all the judgments of conviction and sentences. *See State v. (Raymond) Tison*, 129 Ariz. 546, 633 P.2d 355 (1981). The superior court subsequently denied a petition for post-conviction relief and a motion for rehearing. *See* 17 A.R.S. Arizona Rules of

Criminal Procedure, rule 32. Petitioner then petitioned this court for review of the superior court's decision. We have jurisdiction pursuant to Ariz. Const. art. 6, § 5(3), and rule 32. Relief is denied.

The facts of this case are set forth in our decision on direct appeal, *see (Raymond) Tison, supra*, and in the companion case, *State v. (Ricky) Tison*, 129 Ariz. 526, 633 P.2d 335 (1981). Briefly, the facts are as follows. On July 30, 1978, petitioner and his two brothers, Ricky and Donald Tison, assisted in the escape of their father. Gary Tison, and Randy Greenawalt from the Arizona State Prison in Florence. The weapons used in the escape, and during the subsequent twelve-day flight, were provided by the three brothers. The five men fled the prison in a green Ford. Later they transferred to a Lincoln Continental. At one point the Lincoln became disabled with a flat tire. When four people in a passing car stopped to render aid, the gang killed the four and took the car. The gang was apprehended on August 11, 1978, after running a police roadblock.

# I. ENMUND ISSUE

Petitioner argues that imposition of the death penalty in this case is unconstitutional under *Enmund v. Florida*, 458 U.S. 782, 102 S. Ct. 3368, 73 L. Ed. 2d 1140 (1982). The United States Supreme Court, in *Enmund*, held that the eighth amendment prohibits imposition of the death penalty absent a showing that the defendant killed, attempted to kill, or intended to kill. Intend to kill includes the situation in which the defendant intended, contemplated, or anticipated that lethal force would or might be used or that life would or might be taken in accomplishing the underlying felony. *Enmund, supra*; *State v. Emery*, filed June 6, 1984.

In the present case the evidence does not show that petitioner killed or attempted to kill. The evidence does demonstrate beyond a reasonable doubt, however, that petitioner intended to kill. Petitioner played an active

part in preparing the breakout, including obtaining a getaway car and various weapons. At the breakout scene itself, petitioner played a crucial role by, among other things, holding a gun on prison guards. Petitioner knew that Gary Tison's murder conviction arose out of the killing of a guard during an earlier prison escape attempt. Thus, petitioner could anticipate the use of lethal force during this attempt to flee confinement; in fact, he later said that during the escape he would have been willing personally to kill in a "very close life or death situation," and that he recognized that after the escape there was a possibility of killings.

The use of lethal force that petitioner contemplated indeed occurred when the gang abducted the people who stopped on the highway to render aid. Petitioner played an active part in the events that led to the murders. He assisted in the abduction by flagging down the victims as they drove by, while the other members of the gang remained hidden and armed. He assisted in escorting the victims to the murder site. At the site, petitioner Ricky Tison and Greenawalt placed the gang's possessions in the victim's Mazda and the victims' possessions in the gang's disabled Lincoln Continental. After Gary Tison rendered the Lincoln inoperable by firing into its engine compartment, petitioner assisted in escorting the victims to the Lincoln. Petitioner then watched Gary Tison and Greenawalt fire in the direction of the victims. Petitioner did nothing to interfere. After the killings, petitioner did nothing to disassociate himself from Gary Tison and Greenawalt, but instead used the victims' car to continue on the joint venture, a venture that lasted several more days.

From these facts we conclude that petitioner intended to kill. Petitioner's participation up to the moment of the firing of the fatal shots was substantially the same as that of Gary Tison and Greenawalt. See (*Ricky*) *Tison*, *supra*, 129 Ariz. at 545, 633 P.2d at 354. Petitioner, actively participated in the events leading to

death by, *inter alia*, providing the murder weapons and helping abduct the victims. Also, petitioner was present at the murder site, did nothing to interfere with the murders, and after the murders even continued on the joint venture.

The present fact situation is significantly different from that in *Enmund* and much more analogous to cases decided subsequently to *Enmund* in which the *Enmund* requirement was satisfied. In *Enmund*, unlike in the present case, the defendant did not actively participate in the events leading to death (by, for example, as in the present case, helping abduct the victims) and was not present at the murder site. In contrast, in *State v. Gillies*, 135 Ariz. 500, 662 P.2d 1007 (1983), in which the *Enmund* requirement was satisfied, the defendant, as in the instant case, (1) actively participated in the events leading to the death of the victim by assisting in her abduction, transporting her to the murder site, and providing the instrument used to kill the victim, (2) was present at all times during the murder, and (3) did nothing to interfere. Also, in *Ruffin v. State*, 420 So. 2d 591 (Fla. 1982), as in the instant case, the defendant assisted in the abduction, was present at the killing, made no effort to interfere, and continued on the joint venture, using the victim's automobile. See also, *e.g.*, *Hall v. State*, 420 So. 2d 872 (Fla. 1982); *Johnson v. Zant*, 249 Ga. 812, 295 S.E.2d 63 (1982), *cert. denied*, — U.S. —, 103 S. Ct. 1236, 75 L. Ed. 2d 469 (1983). The dictate of *Enmund* is satisfied.

## II. ISSUES RAISED ON DIRECT APPEAL

Petitioner incorporates by reference all of the issues he raised to this court on direct appeal. We considered these issues on direct appeal and will not consider them again. See 17 A.R.S. Rules of Crim. Pro., rule 32.2 (a) (2).



### III. ASSISTANCE OF COUNSEL

Petitioner argues that his assistance of counsel at trial was ineffective because trial counsel did not request a hearing pursuant to *State v. Dessureault*, 104 Ariz. 380, 453 P.2d 951 (1969), *cert. denied*, 397 U.S. 965, 90 S. Ct. 1000, 25 L. Ed. 2d 257 (1970), to question the reliability of identifications by a witness, Inez Stott, who testified she saw appellant in Yuma County (the county where the murders occurred). On direct appeal, petitioner alleged, albeit not for the same reason as urged before us now, that his trial counsel was ineffective. On direct appeal we addressed petitioner's allegations of ineffective assistance. See (*Raymond*) *Tison*, 129 Ariz. at 556, 633 P.2d at 365. We also examined the record and found no indication that trial counsel's efforts were inadequate. *Id.* Thus, the ineffectiveness claim was "[f]inally adjudicated on the merits on appeal," rule 32.2 (a) (2), and is now precluded. See *State v. Scrivner*, 132 Ariz. 52, 54, 643 P.2d 1022, 1024 (App. 1982).

Even if petitioner's claim were not precluded, it would not warrant relief. The facts relevant to petitioner's claim are as follows. On August 9, 1978, while petitioner was still at large, investigators interviewed Inez Stott. She told the investigators that while working at a general store in Wenden (Yuma County) Arizona, two teenaged boys, and later an older man, entered the store and purchased some spray paint. The investigators showed her photographs of Greenawalt, Gary Tison, and the three Tison brothers. The police report states that "STOCK [sic] did not positively identify any of the individuals shown to her, and the most that STOCK [sic] could say was that the teenage boys appeared to be similar in appearance as photographs of RAYMOND CURTIS TISON and DONALD JOE TISON."

Stott was interviewed again on September 11, 1978. As during the first interview, she was shown photographs of Greenawalt, Gary Tison, and the three Tison brothers.

The police report states that this time "she indicated that RICKY and RAYMOND TISON were the two boys who purchased the paint." The next day Stott was interviewed a third time. The police report states that she "was shown all the photos of the male suspects involved in this investigation. She was unable to identify any one other than RICKY and RAYMOND TISON." During the third interview, Stott agreed to be hypnotized and apparently was hypnotized later that day.

Petitioner demonstrates concern that trial counsel did not, in light of the hypnosis conducted on September 12, 1978, question Inez Stott's competency to identify petitioner at trial. Petitioner was tried in early 1979. It was not until 1980 that this court specifically addressed the admissibility of testimony by witnesses who have been hypnotized, see *State v. La Mountain*, 125 Ariz. 547, 611 P.2d 551 (1980), and it was not until 1982 that this issue was settled, see *State ex rel. Collins v. Superior Court*, 132 Ariz. 180, 644 P.2d 1266 (1982). Even in *State v. Superior Court*, three justices wrote separately from the court's opinion and the fifth justice concurred in one of the separate opinions. It is not ineffective for counsel to fail to foresee developments in the law concerning a controversial subject like the use of testimony from a witness who has been hypnotized. See *Cooper v. Fitzharris*, 586 F.2d 1325, 1333-34 (9th Cir. 1978), *cert. denied*, 440 U.S. 974, 99 S. Ct. 1542, 59 L. Ed. 2d 793 (1979).

Petitioner contends that the hypnosis and the suggestiveness of the photo showups created a substantial question about the reliability of Inez Stott's in-court testimony, and that it was therefore ineffective assistance for counsel not to request a *Dessureault* hearing. Any error was simply not prejudicial to petitioner. Petitioner argues that Inez Stott's testimony was important to the state's case because she was the only live witness who could place petitioner in Yuma County near the time of the murders. Petitioner neglects, however, the physical evidence

demonstrating the same thing. It is uncontroverted that petitioner was with the gang both before the murders (at the prison escape) and after (at the roadblock capture). Petitioner's fingerprints were found on the Lincoln Continental, including "on the door release button . . . [,] thereby strongly suggesting that he was present at the scene of the homicides." (*Raymond*) *Tison*, *supra*, 129 Ariz. at 554, 633 P.2d at 363. Also, on August 2, 1978 petitioner was seen near Flagstaff using the victims' Mazda. Finally, petitioner's fingerprints were found on the steering wheel of the Mazda when it was discovered partially buried near Flagstaff. We conclude that these facts rendered nonprejudicial any ineffectiveness of counsel arising from the failure to request a *Dessureault* hearing with regard to witness Inez Stott.

#### IV. DEATH PENALTY ISSUES

Petitioner argues that Arizona's death penalty statute is unconstitutional because it excludes jury involvement in the sentencing decision. We disagree. *See, e.g.*, *State v. Smith*, 136 Ariz. 273, 277-78, 665 P.2d 995, 999-1000 (1983); *State v. Gretzler*, 135 Ariz. 42, 56, 659 P.2d 1, 15 (1983); *State v. Blazak*, 131 Ariz. 598, 602, 643 P.2d 694, 698 (1982). The United States Supreme Court also disagrees. *See Spaziano v. Florida*, 44 CCH Bull. P., B4403 (July 2, 1984).

Petitioner also argues that on direct appeal this court did not conduct a proportionality review and that therefore petitioner's right to meaningful appellate review was violated. We conduct proportionality reviews pursuant to our decision in *State v. Richmond*, 114 Ariz. 186, 196, 560 P.2d 41, 51 (1976), *cert. denied*, 433 U.S. 915, 97 S. Ct. 2988, 53 L. Ed. 2d 1101 (1977). We decided *Richmond* almost five years before we considered petitioner's case on direct appeal. Although not explicitly stated in the opinion, on direct appeal we followed *Richmond*. This contention is meritless.

Relief denied.

JACK D. H. HAYS, Justice

CONCURRING:

WILLIAM A. HOLOHAN, Chief Justice

JAMES DUKE CAMERON, Justice



FELDMAN, J. concurring in part, dissenting in part,

I concur in all portions of the opinion except that dealing with the "Enmund Issue" (slip op. at 2-4). I dissent from that portion of the opinion because the majority's holding is contrary to *Enmund v. Florida*, 458 U.S. 782, 102 S.Ct. 3368 (1982), because it does not follow our own rules and authority and because it usurps the function of the trial court.

*Enmund* teaches that the death penalty may not be imposed on one who neither killed, attempted to kill nor intended a killing. *Id.* at 797, 102 S.Ct. at 3376-77. Three years ago this court held that the record in this case did not support the conclusions that are now necessary to comply with *Enmund*. In affirming the sentence, we stated:

That they [the Tison brothers] did not specifically intend that the [victims] die, that they did not plot in advance that these homicides would take place, or that they did not actually pull the triggers on the guns which inflicted the fatal wounds is of little significance.

*State v. Tison* [Ricky], 129 Ariz. 526, 545, 633 P.2d 335, 354 (1981).

Since that initial review no further evidence has been presented. Defendant commenced proceedings for post-conviction relief (Rule 32, Ariz. R. Crim. P., 17 A.R.S.), and the trial court summarily denied such relief. The case is now before us for review of that summary denial. Thus, the record before us today is the same that was before us in 1981 when we affirmed *State v. Tison* [Ricky], *supra*, and *State v. Tison* [Raymond], 129 Ariz. 546, 633 P.2d 355 (1981).

*Enmund* was decided three years after the imposition of sentence and nine months after our affirmance of both *Tison* cases. The only question before us today is whether the intervening decision in *Enmund* permits imposition

of the death sentence in the absence of an evidentiary hearing and findings on the issues which *Enmund* raises. Does the record today support what it could not support in 1981—that defendants either killed, attempted to kill or intended that the victims be killed? Ignoring its statements in 1981, the majority answers affirmatively, holding that the *Enmund* test was met. It acknowledges that "the evidence does not show that petitioner killed or attempted to kill," but holds that "[t]he evidence does demonstrate beyond a reasonable doubt, however, that petitioner intended to kill." (Slip op. at 2.)

Even if we ignore the previous contrary conclusion, today's holding is remarkable because there is no direct evidence that either of the brothers intended to kill, actually participated in the killing or was aware that lethal force would be used against the kidnap victims. Further, the trial judge made no finding on any of the *Enmund* factors. How, then, can this court hold that the *Enmund* test is satisfied? That answer, too, is contained in the majority opinion: "we conclude," states the majority, "that [defendant] intended to kill." (Slip. op. at 3, emphasis supplied.) I had thought that such inferences were for the fact finder, not the appellate court, especially one which had previously noted its inability to make such an inference.

The trial judge not only failed to make the necessary findings but, more importantly, conducted no inquiry on the subject. Because the sentencing hearing was held before *Enmund* was decided, the issue of defendant's individual *mens rea* with respect to the killing was not addressed; instead, the trial judge confined himself to making the findings required under the law as it then existed. The defendants had been convicted on a general verdict of guilt following instructions which included both premeditated murder and felony murder. The general verdict, of course, did not indicate which theory the jury adopted. It is clear, however, that the trial judge was aware that the record supported only a conviction under

the felony murder rule, for he found as a mitigating circumstance that Ricky had been "convicted of four murders under the felony murder instructions." (R.T. 64 (a), 3/29/79.) Under the law as it then existed, the judge was concerned (as was the trial judge in *Enmund*, 458 U.S. at 805-06, 102 S.Ct. at 3381, O'Connor, J., dissenting) with the question of defendant's participation in the underlying felony. The defendant's legal accountability for the conduct of another was a mitigating factor to be considered by the judge before imposition of the death penalty if the defendant's "participation was relatively minor." A.R.S. 13-703(G)(3). Thus, instead of the findings now required by *Enmund*, the trial judge found only the following:

... Even accepting as true [defendant's] statements of who actually fired the fatal shots, it cannot be said that their participation was relatively minor. By their own statements their participation up to the moment of the firing of the fatal shots was substantially the same as that of Randy Greenawalt and Gary Tison. At the moment of the firing their participation may not have equalled that of Randy Greenawalt and Gary Tison, but their standing and watching while armed themselves cannot be characterized as relatively minor participation.

(Special Verdict at 5.) This, of course, is the same finding made by the trial judge in *Enmund*, who "concluded" that the defendant "was an accomplice to the capital felony and that his participation had not been 'relatively minor,' but had been major . . . ." *Enmund*, 458 U.S. at 806, 102 S.Ct. at 3381 (O'Connor, J., dissenting). Such a finding is not sufficient to meet the *Enmund* test; Justice O'Connor has instructed with respect to the minimum *Enmund* requires:

Thus, in deciding whether or not to impose capital punishment on a felony murder, a sentencer must consider any relevant evidence or arguments that

the death penalty is inappropriate for a particular defendant because of his relative lack of mens rea and his peripheral participation in the murder.

*Id.* at 828, 102 S.Ct. at 3393 (emphasis supplied).

Under the plurality view expressed by Justice White, the requirement may be more stringent. Whatever the exact standard may be, it has not been met in this case. In the absence of an evidentiary hearing on the *Enmund* issues, we have only the majority's ultimate inference of defendant's intent. What is worse, the majority has drawn this inference before defendant has been permitted to submit evidence on the issue. It is wrong for a reviewing court to draw such an inference; because it is only one of multiple competing inferences, it should be left to the finder of fact. The error is compounded when the reviewing court draws the inference before receiving all the evidence. Because the sentencing hearing was not directed to the issue of mens rea and participation in the murder, and because defendant's application for relief under Rule 32 was summarily dismissed without an evidentiary hearing, to this date defendant has not been given a specific opportunity to submit evidence on the narrow issue which, after *Enmund*, became determinative.

To further compound the error, in drawing its inference the majority deals only with peripheral conclusions and ignores crucial facts. It decides that defendant's "participation up to the moment of the firing of the fatal shots was substantially the same as that of Gary Tison and Greenawalt." (Slip op. at 3, emphasis supplied.) It points out that defendant "actively participated in the events leading to death." (*Id.*, emphasis supplied.) This is correct; no doubt defendant intentionally engaged in a dangerous criminal enterprise involving the use of deadly weapons. But no matter how the facts here are marshaled, we are faced with the *Enmund* rule and the facts which generated it. *Enmund* planned the armed robbery, transported two persons to the



site of the crime, sent them into the house to commit the robbery knowing that they were armed, waited for them and drove the get-away car. With knowledge that they had killed, Enmund helped them flee, dispose of the weapons and attempt to evade apprehension. The facts in the instant case establish no more participation in the murders than was proved in *Enmund*. Here, as in *Enmund*, the inquiry is not to be focused on defendant's participation in the underlying felony which led to conviction under the felony murder rule, but on defendant's intentional or knowing participation in the killing, a subject on which the trial judge made no finding, but only stated that defendant's participation in the killing "may not have equalled" that of the others.

The majority makes much of the fact that defendant was at the "site," watched the killings and did nothing to stop them (slip op. at 3). It neglects to mention that, as in *Enmund* (458 U.S. at 784, 102 S.Ct. at 3370), all of this took place from some distance. The only evidence on the issue indicates that before the killings both of the Tison brothers had been sent back to the victims' car by their father and were some distance away from the actual place at which the killings occurred. (Statements of Ricky Tison, 1/26/79 at 13 and 2/1/79 at 35; Statements of Raymond Tison, 1/26/79 at 18, and 2/1/79 at 42.) There is neither a finding from the trial court nor evidence to establish that defendant was in a position to prevent the killing, if he had wanted to. There is evidence that although defendant was "worried" about his father's intentions toward the kidnap victims, he did not know what was going to happen until, from the other car some distance away, he and his brother presumably heard the first shot, turned and saw the killings. (Statements of Ricky Tison, 1/26/79 at 9 and 13; Statement of Raymond Tison, 1/26/79 at 18.)

The proper course for us is no mystery; we have recognized the pertinent legal principles in the recent past. In *State v. Emery*, — Ariz. —, — P.2d — (No.

5001-2, filed May 1, 1984), we acknowledge that the "determination required by *Enmund* . . . ought to be made by the trial court as part of its duty to impose sentence . . . ." In *Emery* we reduced the sentence to life because the record made it clear that the trial court could not make such a finding even on remand. In *State v. McDaniel*, 136 Ariz. 188, 665 P.2d 70 (1983) we invoked *Enmund* to require specific findings whenever a defendant may have been convicted of capital murder pursuant to a felony murder instruction. We instructed sentencing judges that *they* must find beyond a reasonable doubt that the defendant killed, attempted to kill or intended the death of the victim before a sentence of death could be imposed. *Id.* at 199, 665 P.2d at 81. We did not indicate that where the trial judge failed to do so, we could cure the defect by a de novo review of the record. In *State v. Gillies*, 135 Ariz. 500, 662 P.2d 1007 (1983), we affirmed a sentence imposed pre-*Enmund* but applied the *Enmund* criteria and correctly found that defendant's "participation in the murder was substantial and intentional." *Id.* at 515, 662 P.2d at 1022. However, we based the affirmance upon a finding *made by the trial judge* that the victim's death was "the result that [Gillies] wished to have occurred." *Id.* at 514, 662 P.2d at 1021. In *Gillies* we also discussed the Florida cases on which the majority relies today,<sup>1</sup> pointing out that, as with the Florida defendants, Gillies had participated with his co-defendant in both the underlying felony *and* the actual killing. In such cases, where the participant of each of the defendants is so similar that the only question concerns struck the final blow, the *Enmund* standard is satisfied. The weight of authority indicates, however, that where the defendant's participation is only in the underlying felony, and where he does not intend that the victim be killed and does not actually participate in the

<sup>1</sup> *Hall v. State*, 420 So. 2d 872 (Fla. 1982) and *Ruffin v. State*, 420 So. 2d 591 (Fla. 1982).

killing, the death penalty may not be imposed. *State v. Emery, supra*; *People v. Jones*, 94 Ill. 2d 275, 447 N.E.2d 161 (1982); *People v. Tiller*, 94 Ill. 2d 303, 447 N.E. 2d 174 (1982), *cert. denied*, — U.S. —, 103 S.Ct. 2121 (1983). This, of course, is the ultimate principle for which *Enmund* stands.

The state argues,<sup>2</sup> and the majority flirts with, the question of foreseeability. Undoubtedly *Tison* should have foreseen the possibility that there might be a killing in the course of the prison break or the flight which followed. Thus, the majority points out (slip op. at 2) that petitioner "could anticipate the use of lethal force during this attempt to flee confinement." If this is an attempt to apply the tort doctrine of foreseeability to capital punishment cases in order to satisfy the *Enmund* criteria, it must be doomed to failure. Of course, the foreseeable "possibility" that death may occur may grow to a point where, as Justice White indicates, death may be imposed because the defendant "contemplated that life would be taken." *Enmund*, 458 U.S. at 801, 102 S.Ct. at 3379. The United States Supreme Court has not yet had occasion to draw that line and explain the degree of "contemplation" required to impose death, nor have we attempted to do so. No line can be drawn in this case because there is neither evidence nor a finding upon which to base consideration of such an issue. The trial judge found only as follows:

<sup>2</sup> At oral argument, however, the state conceded that remand for a new sentencing hearing was the best course to follow. In answer to the court's question

Wouldn't the state be better off with specific findings one way or the other . . . ?

the state's attorney responded, with commendable candor:

I think so, and I think, I think it's better for all parties concerned that there be specific findings and in this particular situation I think the trial court ought to make those findings to give this court and perhaps other courts a record from which to operate.

4. Each defendant could have reasonably foreseen that his conduct in the course of the commission of the offense for which he was convicted would cause or create a grave risk of causing death to another person.

That finding is undoubtedly correct and probably is intended to reflect the aggravating circumstances described in A.R.S. § 13-703(F)(3). It would undoubtedly have been correct if applied to Mr. *Enmund*, who sent two armed robbers into a house to commit a robbery and certainly could have foreseen that they might be interrupted during the course of the crime and might kill to save their own lives or to escape. But *Enmund* teaches us that tort foreseeability is not the test. The evidence in this case regarding the reason for the killing of the kidnap victims has not yet been presented, so we cannot tell whether a "bright line" can be drawn between tort foreseeability and "contemplation." All we know here is that the only direct evidence of what the brothers expected when they began the criminal enterprise is the following statement made by Raymond, before being sentenced:

"Well, I just think you should know when we first came into this we had an agreement with my dad that nobody would get hurt because we [the brothers] wanted no one hurt. And when this [killing of the kidnap victims] came about we were not expecting it. And it took us by surprise as much as it took the family [the victims] by surprise because we were not expecting this to happen. And I feel bad about it happening. I wish we could [have done] something to stop it, but by the time it happened it was too late to stop it. And it's just something we are going to live with the rest of our lives. It will always be there.

(Aggravation Hearing and Sentencing Transcript, 3/14/79, at 159.)



This, indeed, is meager evidentiary support for this court's finding that defendant intended to kill. The trial judge should impose sentence after an evidentiary hearing on the issue of *mens rea*. The procedure to handle cases such as this is set forth in Rule 32, Ariz. R. Crim. P., 17 A.R.S., which provides:

32.1 . . . any person who has been . . . sentenced . . . may . . . institute a proceeding to secure appropriate relief on the ground . . . that:

g. There has been a significant change in the law applied in the process which led to . . . sentence,

. . . . .

32.6(c) The [trial] court shall review the [Rule 32] petition. . . If . . . it determines that no material issue of fact or law exists which would entitle petitioner to relief under this rule . . . , it may order the petition dismissed . . . . Otherwise, the court shall direct that the proceeding continue and ~~set a hearing.~~ . . .

*Enmund* has changed the law since sentencing in this case. *Enmund* creates an issue as to defendant's *mens rea* with respect to the murder, not just the underlying felony. There has been no hearing on that issue. There has been no trial court decision on that issue. We are a reviewing court, not a fact finder. Without a hearing and a finding by the trial court, there is nothing for us to review.

I would obey the dictate of *Enmund* and require an "individualized consideration" of *mens rea* or intent to kill as a constitutional requirement in imposing the death sentence. 458 U.S. at 798, 102 S.Ct. at 3377. I would follow the rules we have written and procedures we have recognized in other cases to resolve the factual issue before addressing the constitutional issue. Once there has been a hearing, the trial judge can make the findings re-

quired by *Enmund*. Then and only then can we review the record. We should remand for a new sentencing hearing.

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STANLEY G. FELDMAN, Justice

GORDON, Vice Chief Justice,

I concur with Justice Feldman's dissent.

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FRANK X. GORDON, Vice Chief Justice

IN THE SUPREME COURT  
OF THE STATE OF ARIZONA  
En Banc

Supreme Court No. 4612-2-PC  
Yuma County Superior Court No. 9299

STATE OF ARIZONA, APPELLEE

v.

RICKY WAYNE TISON, APPELLANT

Filed: October 18, 1984

Appeal from the Superior Court of Yuma County  
The Honorable Douglas W. Keddie, Judge

RELIEF DENIED

• • • •

OPINION

HAYS, Justice

Petitioner, Ricky Wayne Tison, was convicted of four counts of first degree murder, two counts of armed robbery, three counts of kidnapping, and one count of theft of a motor vehicle. Petitioner was sentenced to death for each first degree murder conviction. On direct appeal, this court affirmed all the judgments of conviction and sentences. See *State v. (Ricky) Tison*, 129 Ariz. 526, 633

P.2d 335 (1981). The superior court subsequently denied a petition for post-conviction relief and a motion for rehearing. See 17 A.R.S. Arizona Rules of Criminal Procedure, rule 32. Petitioner then petitioned this court for review of the superior court's decision. We have jurisdiction pursuant to Ariz. Const. art. 6, § 5(3), and rule 32. Relief is denied.

The facts of this case are set forth in our decision on direct appeal, see *(Ricky) Tison*, *supra*, and in the companion case, *State v. (Raymond) Tison*, 129 Ariz. 546, 633 P.2d 355 (1981). Briefly, the facts are as follows. On July 30, 1978, petitioner and his two brothers, Raymond and Donald Tison, assisted in the escape of their father, Gary Tison, and Randy Greenawalt from the Arizona State Prison in Florence. The weapons used in the escape, and during the subsequent twelve-day flight, were provided by the three brothers. The five men fled the prison in a green Ford. Later they transferred to a Lincoln Continental. At one point the Lincoln became disabled with a flat tire. When four people in a passing car stopped to render aid, the gang killed the four and took their car. The gang was apprehended on August 11, 1978, after running a police roadblock.

I. ENMUND ISSUE

Petitioner argues that imposition of the death penalty in this case is unconstitutional under *Enmund v. Florida*, 458 U.S. 782, 102 S. Ct. 3368, 73 L. Ed. 2d 1140 (1982). The United States Supreme Court, in *Enmund*, held that the eighth amendment prohibits imposition of the death penalty absent a showing that the defendant killed, attempted to kill, or intended to kill. Intend to kill includes the situation in which the defendant intended, contemplated, or anticipated that lethal force would or might be used or that life would or might be taken in accomplishing the underlying felony. *Enmund*, *supra*; *State v. Emery*, filed June 6, 1984.



In the present case the evidence does not show that petitioner killed or attempted to kill. The evidence does demonstrate beyond a reasonable doubt, however, that petitioner intended to kill. Petitioner played an active part in preparing the breakout, including obtaining a get-away car and various weapons, and sawing off shotguns for use in the escape. At the breakout scene itself, petitioner played a crucial role by, among other things, holding a gun on prison guards. Petitioner knew that Gary Tison's murder conviction arose out of the killing of a guard during an earlier prison escape attempt. Thus, petitioner could anticipate the use of lethal force during this attempt to flee confinement.

Lethal force was indeed used when the gang abducted the people who stopped on the highway to render aid. Petitioner played an active part in the events that led to the murders. He assisted in the abduction by arming himself and hiding with Gary Tison, Donald Tison, and Greenawalt while Raymond Tison flagged down the victims as they drove by. Petitioner assisted in escorting the victims to the murder site. At the site, petitioner, Raymond Tison and Greenawalt placed the gang's possessions in the victims' Mazda and the victims' possessions in the gang's disabled Lincoln Continental. After Gary Tison rendered the Lincoln inoperable by firing into its engine compartment, petitioner assisted in escorting the victims to the Lincoln. Petitioner then watched Gary Tison and Greenawalt raise their weapons and fire in the direction of the Lincoln. Petitioner was close enough and had a good enough view to observe that Gary Tison was on the passenger side of the Lincoln and Greenawalt was on the driver side. Petitioner did nothing to interfere. After the killings, petitioner did nothing to disassociate himself from Gary Tison and Greenawalt, but instead used the victims' car to continue on the joint venture, a venture that lasted several more days.

From these facts we conclude that petitioner intended to kill. We agree with the trial court that by his own

statements petitioner's participation up to the moment of the firing of the fatal shots was substantially the same as that of Gary Tison and Greenawalt. See (*Ricky*) *Tison*, *supra*, 129 Ariz. at 545, 633 P.2d at 354. Petitioner, actively participated in the events leading to death by, *inter alia*, providing the murder weapons and helping abduct the victims. Also, petitioner was present at the murder site, did nothing to interfere with the murders, and after the murders even continued on the joint venture.

The present fact situation is significantly different from that in *Enmund* and much more analogous to cases decided subsequently to *Enmund* in which the *Enmund* requirement was satisfied. In *Enmund*, unlike in the present case, the defendant did not actively participate in the events leading to death (by, for example, as in the present case, helping abduct the victims) and was not present at the murder site. In contrast, in *State v. Gillies*, 135 Ariz. 500, 662 P.2d 1007 (1983), in which the *Enmund* requirement was satisfied, the defendant, as in the instant case, 1) actively participated in the events leading to the death of the victim by assisting in her abduction, transporting her to the murder site, and providing the instrument used to kill the victim, 2) was present at all times during the murder, and 3) did nothing to interfere. Also, in *Ruffin v. State*, 420 So. 2d 591 (Fla. 1982), as in the instant case, the defendant assisted in the abduction, was present at the killing, made no effort to interfere, and continued on the joint venture, using the victim's automobile. See also, *e.g.*, *Hall v. State*, 420 So. 2d 872 (Fla. 1982); *Johnson v. Zant*, 249 Ga. 812, 295 S.E.2d 63 (1982), *cert. denied*, — U.S. —, 103 S. Ct. 1236, 75 L. Ed. 2d 469 (1983). The dictate of *Enmund* is satisfied.

## II. ISSUES RAISED ON DIRECT APPEAL

Petitioner incorporates by reference all of the issues he raised to this court on direct appeal. We considered these

issues on direct appeal and will not consider them again. See 17 A.R.S. Rules of Crim. Pro., rule 32.2(a) (2)

### III. ASSISTANCE OF COUNSEL

Petitioner argues that his assistance of counsel at trial was ineffective because trial counsel did not request a hearing pursuant to *State v. Dessureault*, 104 Ariz. 380, 453 P.2d 951 (1969), *cert. denied*, 397 U.S. 965, 90 S. Ct. 1000, 25 L. Ed. 2d 257 (1970), to question the reliability of identifications by a witness, Inez Stott, who testified she saw appellant in Yuma County (the county where the murders occurred).

Petitioner's claim does not warrant relief. The facts relevant to petitioner's claim are as follows. On August 9, 1978, while petitioner was still at large, investigators interviewed Inez Stott. She told the investigators that while working at a general store in Wenden (Yuma County) Arizona, two teenaged boys, and later an older man, entered the store and purchased some spray paint. The investigators showed her photographs of Greenawalt, Gary Tison, and the three Tison brothers. The police report states that "STOCK [sic] did not positively identify any of the individuals shown to her, and the most that STOCK [sic] could say was that the teenage boys appeared to be similar in appearance as photographs of RAYMOND CURTIS TISON and DONALD JOE TISON."

Stott was interviewed again on September 11, 1978. As during the first interview, she was shown photographs of Greenawalt, Gary Tison, and the three Tison brothers. The police report states that this time "she indicated that RICKY and RAYMOND TISON were the two boys who purchased the paint." The next day Stott was interviewed a third time. The police report states that she "was shown all the photos of the male suspects involved in this investigation. She was unable to identify any one other than RICKY and RAYMOND TISON." During the third

interview, Stott agreed to be hypnotized and apparently was hypnotized later that day.

Petitioner demonstrates concern that trial counsel did not, in light of the hypnosis conducted on September 12, 1978, question Inez Stott's competency to identify petitioner at trial. Petitioner was tried in early 1979. It was not until 1980 that this court specifically addressed the admissibility of testimony by witnesses who have been hypnotized, see *State v. La Mountain*, 125 Ariz. 547, 611 P.2d 551 (1980), and it was not until 1982 that this issue was settled, see *State ex rel. Collins v. Superior Court*, 132 Ariz. 180, 644 P.2d 1266 (1982). Even in *State v. Superior Court*, three justices wrote separately from the court's opinion and the fifth justice concurred in one of the separate opinions. It is not ineffective for counsel to fail to foresee developments in the law concerning a controversial subject like the use of testimony from a witness who has been hypnotized. See *Cooper v. Fitzharris*, 586 F.2d 1325, 1333-34 (9th Cir. 1978), *cert. denied*, 440 U.S. 974, 99 S. Ct. 1542, 59 L. Ed. 2d 793 (1979).

Petitioner contends that the hypnosis and the suggestiveness of the photo showups created a substantial question about the reliability of Inez Stott's in-court testimony, and that it was therefore ineffective assistance for counsel not to request a *Dessureault* hearing. Any error was simply not prejudicial to petitioner. Petitioner argues that Inez Stott's testimony was important to the state's case because she was the only live witness who could place petitioner in Yuma County near the time of the murders. Petitioner neglects, however, other evidence placing him at the murder scene. It is uncontroverted that petitioner was with the gang both before the murders (at the prison escape) and after (at the roadblock capture). Petitioner's fingerprints were found on the Lincoln Continental and in the victims' Mazda. Finally, petitioner's own statements place him at the murder scene, as a participant in the abduction of the murder victims.



We conclude that these facts rendered nonprejudicial any ineffectiveness of counsel arising from the failure to request a *Dessureault* hearing with regard to witness Inez Stott.

#### IV. DEATH PENALTY ISSUES

Petitioner argues that Arizona's death penalty statute is unconstitutional because it excludes jury involvement in the sentencing decision. We disagree. See, e.g., *State v. Smith*, 136 Ariz. 273, 277-78, 665 P.2d 995, 999-1000 (1983); *State v. Gretzler*, 135 Ariz. 42, 56, 659 P.2d 1, 15 (1983); *State v. Blazak*, 131 Ariz. 598, 602, 643 P.2d 694, 698 (1982). The United States Supreme Court also disagrees. See *Spaziano v. Florida*, 44 CCH S. Ct. Bull. P., B4403 (July 2, 1984).

Petitioner also argues that on direct appeal this court did not conduct a proportionality review and that therefore petitioner's right to meaningful appellate review was violated. We conduct proportionality reviews pursuant to our decision in *State v. Richmond*, 114 Ariz. 186, 196, 560 P.2d 41, 51 (1976), cert. denied, 433 U.S. 915, 97 S. Ct. 2988, 53 L. Ed. 2d 1101 (1977). We decided *Richmond* almost five years before we considered petitioner's case on direct appeal. Although not explicitly stated in the opinion, on direct appeal we followed *Richmond*. This contention is meritless.

#### V. MIRANDA WARNINGS

Petitioner argues that several statements were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). We addressed this issue on direct appeal. See (*Ricky*) *Tison*, supra, 129 Ariz. at 535-36, 633 P.2d at 344-45. We found that the record showed that before the trial court petitioner challenged the admissibility of his statements only as to voluntariness and not as to *Miranda*, and therefore the *Miranda* issue had been waived on appeal.

Petitioner now desires a hearing to show that at the suppression hearing the parties understood that the statements at issue were being challenged as to *Miranda* as well as voluntariness. It is well established that a party must state distinctly the grounds for a challenge to the admissibility of evidence, e.g., *State v. Thomas*, 130 Ariz. 432, 435, 636 P.2d 1214, 1217 (1981); *State v. Baca*, 102 Ariz. 83, 87, 425 P.2d 108, 112 (1967), and that we therefore consider the objective record, not the subjective intentions of one or more of the parties. We held on direct appeal that the record shows that the statements were not challenged as to *Miranda*. The issue was waived.

Relief denied.

JACK D. H. HAYS, Justice

CONCURRING:

WILLIAM A. HOLOHAN, Chief Justice

JAMES DUKE CAMERON, Justice

FELDMAN, J. concurring in part, dissenting in part,

I concur in all portions of the opinion except that dealing with the "*Enmund* Issue (slip op. at 2-4). I dissent from that portion of the opinion because the majority's holding is contrary to *Enmund v. Florida*, 458 U.S. 782, 102 S.Ct. 3368 (1982), because it does not follow our own rules and authority and because it usurps the function of the trial court.

*Enmund* teaches that the death penalty may not be imposed on one who neither killed, attempted to kill nor intended a killing. *Id.* at 797, 102 S.Ct. at 3376-77. Three years ago this court held that the record in this case did not support the conclusions that are now necessary to comply with *Enmund*. In affirming the sentence, we stated:

That they [the Tison brothers] did not specifically intend that the [victims] die, that they did not plot in advance that these homicides would take place, or that they did not actually pull the triggers on the guns which inflicted the fatal wounds is of little significance.

*State v. Tison* [Ricky], 129 Ariz. 526, 545 633 P.2d 335, 354 (1981).

Since that initial review no further evidence has been presented. Defendant commenced proceedings for post-conviction relief (Rule 32, Ariz. R. Crim. P., 17 A.R.S.), and the trial court summarily denied such relief. The case is now before us for review of that summary denial. Thus, the record before us today is the same that was before us in 1981 when we affirmed *State v. Tison* [Ricky], *supra*, and *State v. Tison* [Raymond], 129 Ariz. 546, 633 P.2d 355 (1981).

*Enmund* was decided three years after the imposition of sentence and nine months after our affirmance of both *Tison* cases. The only question before us today is whether the intervening decision in *Enmund* permits imposition

of the death sentence in the absence of an evidentiary hearing and findings on the issues which *Enmund* raises. Does the record today support what it could not support in 1981—that defendants either killed, attempted to kill or intended that the victims be killed? Ignoring its statements in 1981, the majority answers affirmatively, holding that the *Enmund* test was met. It acknowledges that "the evidence does not show that petitioner killed or attempted to kill," but holds that "[t]he evidence does demonstrate beyond a reasonable doubt, however, that petitioner intended to kill." (Slip op. at 2.)

Even if we ignore the previous contrary conclusion, today's holding is remarkable because there is no direct evidence that either of the brothers intended to kill, actually participated in the killing or was aware that lethal force would be used against the kidnap victims. Further, the trial judge made no finding on any of the *Enmund* factors. How, then, can this court hold that the *Enmund* test is satisfied? That answer, too, is contained in the majority opinion: "*we* conclude," states the majority, "that [defendant] intended to kill." (Slip op. at 3, emphasis supplied.) I had thought that such inferences were for the fact finder, not the appellate court, especially one which had previously noted its inability to make such an inference.

The trial judge not only failed to make the necessary findings but, more importantly, conducted no inquiry on the subject. Because the sentencing hearing was held before *Enmund* was decided, the issue of defendant's individual *mens rea* with respect to the killing was not addressed; instead, the trial judge confined himself to making the findings required under the law as it then existed. The defendants had been convicted on a general verdict of guilt following instructions which included both premeditated murder and felony murder. The general verdict, of course, did not indicate which theory the jury adopted. It is clear, however, that the trial judge was aware that the record supported only a con-



viction under the felony murder rule, for he found as a mitigating circumstance that Ricky had been "convicted of four murders under the felony murder instructions." (R.T. 64(a), 3/29/79.) Under the law as it then existed, the judge was concerned (as was the trial judge in *Enmund*, 458 U.S. at 805-06, 102 S.Ct. at 3381, O'Connor, J., dissenting) with the question of defendant's participation in the underlying felony. The defendant's legal accountability for the conduct of another was a mitigating factor to be considered by the judge before imposition of the death penalty if the defendant's "participation was relatively minor." A.R.S. 13-703(G)(3). Thus, instead of the findings now required by *Enmund*, the trial judge found only the following:

... Even accepting as true [defendants'] statements of who actually fired the fatal shots, it cannot be said that their participation was relatively minor. By their own statements their participation up to the moment of the firing of the fatal shots was substantially the same as that of Randy Greenawalt and Gary Tison. At the moment of the firing their participation may not have equalled that of Randy Greenawalt and Gary Tison, but their standing and watching while armed themselves cannot be characterized as relatively minor participation.

(Special Verdict at 5.) This, of course, is the same finding made by the trial judge in *Enmund*, who "concluded" that the defendant "was an accomplice to the capital felony and that his participation had not been 'relatively minor,' but had been major . . . ." *Enmund*, 458 U.S. at 806, 102 S.Ct. at 3381 (O'Connor, J., dissenting). Such a finding is not sufficient to meet the *Enmund* test; Justice O'Connor has instructed with respect to the minimum *Enmund* requires:

Thus, in deciding whether or not to impose capital punishment on a felony murder, a sentencer must consider any relevant evidence or arguments that the

death penalty is inappropriate for a particular defendant because of his relative lack of mens rea and his peripheral participation in the murder.

*Id.* at 828, 102 S.Ct. at 3393 (emphasis supplied).

Under the plurality view expressed by Justice White, the requirement may be more stringent. Whatever the exact standard may be, it has not been met in this case. In the absence of an evidentiary hearing on the *Enmund* issues, we have only the majority's ultimate inference of defendant's intent. What is worse, the majority has drawn this inference before defendant has been permitted to submit evidence on the issue. It is wrong for a reviewing court to draw such an inference; because it is only one of multiple competing inferences, it should be left to the finder of fact. The error is compounded when the reviewing court draws the inference before receiving all the evidence. Because the sentencing hearing was not directed to the issue of *mens rea* and participation in the murder, and because defendant's application for relief under Rule 32 was summarily dismissed without an evidentiary hearing, to this date defendant has not been given a specific opportunity to submit evidence on the narrow issue which, after *Enmund*, became determinative.

To further compound the error, in drawing its inference the majority deals only with peripheral conclusions and ignores crucial facts. It decides that defendant's "participation up to the moment of the firing of the fatal shots was substantially the same as that of Gary Tison and Greenawalt." (Slip op. at 3, emphasis supplied.) It points out that defendant "actively participated in the events leading to death." (*Id.*, emphasis supplied.) This is correct; no doubt defendant intentionally engaged in a dangerous criminal enterprise involving the use of deadly weapons. But no matter how the facts here are marshaled, we are faced with the *Enmund* rule and the facts which generated it. *Enmund*

planned the armed robbery, transported two persons to the site of the crime, sent them into the house to commit the robbery knowing that they were armed, waited for them and drove the get-away car. With knowledge that they had killed, Enmund helped them flee, dispose of the weapons and attempt to evade apprehension. The facts in the instant case establish no more participation in the murders than was proved in *Enmund*. Here, as in *Enmund*, the inquiry is not to be focused on defendant's participation in the underlying felony which led to conviction under the felony murder rule, but on defendant's intentional or knowing participation in the killing, a subject on which the trial judge made no finding, but only stated that defendant's participation in the killing "may not have equalled" that of the others.

The majority makes much of the fact that defendant was at the "site," watched the killings and did nothing to stop them (slip op. at 3). It neglects to mention that, as in *Enmund* (458 U.S. at 784, 102 S.Ct. at 3370), all of this took place from some distance. The only evidence on the issue indicates that before the killings both of the Tison brothers had been sent back to the victims' car by their father and were some distance away from the actual place at which the killings occurred. (Statements of Ricky Tison, 1/26/79 at 13 and 2/1/79 at 35; Statements of Raymond Tison, 1/26/79 at 18, and 2/1/79 at 42.) There is neither a finding from the trial court nor evidence to establish that defendant was in a position to prevent the killing, if he had wanted to. There is evidence that although defendant was "worried" about his father's intentions toward the kidnap victims, he did not know what was going to happen until, from the other car some distance away, he and his brother presumably heard the first shot, turned and saw the killings. (Statements of Ricky Tison, 1/26/79 at 9 and 13; Statement of Raymond Tison, 1/26/79 at 18.)

The proper course for us is no mystery; we have recognized the pertinent legal principles in the recent past.

In *State v. Emery*, — Ariz. —, — P.2d — (No. 5001-2, filed May 1, 1984), we acknowledged that the "determination required by *Enmund* . . . ought to be made by the trial court as part of its duty to impose sentence . . . ." In *Emery* we reduced the sentence to life because the record made it clear that the trial court could not make such a finding even on remand. In *State v. McDaniel*, 136 Ariz. 188, 665 P.2d 70 (1983) we invoked *Enmund* to require specific findings whenever a defendant may have been convicted of capital murder pursuant to a felony murder instruction. We instructed sentencing judges that *they* must find beyond a reasonable doubt that the defendant killed, attempted to kill or intended the death of the victim before a sentence of death could be imposed. *Id.* at 199, 665 P.2d at 81. We did not indicate that where the trial judge failed to do so, we would cure the defect by a de novo review of the record. In *State v. Gillies*, 135 Ariz. 500, 662 P.2d 1007 (1983), we affirmed a sentence imposed pre-*Enmund* but applied the *Enmund* criteria and correctly found that defendant's "participation in the murder was substantial and intentional." *Id.* at 515, 662 P.2d at 1022. However, we based the affirmance upon a finding *made by the trial judge* that the victim's death was "the result that [Gillies] wished to have occurred." *Id.* at 514, 662 P.2d at 1021. In *Gillies* we also discussed the Florida cases on which the majority relies today,<sup>1</sup> pointing out that, as with the Florida defendants, Gillies had participated with his co-defendant in both the underlying felony *and* the actual killing. In such cases, where the participation of each of the defendants is so similar that the only question concerns which defendant struck the final blow, the *Enmund* standard is satisfied. The weight of authority indicates, however, that where the defendant's participation is only in the underlying felony, and

<sup>1</sup> *Hall v. State*, 420 So. 2d 872 (Fla. 1982) and *Ruffin v. State*, 420 So. 2d 591 (Fla. 1982).



where he does not intend that the victim be killed and does not actually participate in the killing, the death penalty may not be imposed. *State v. Emery, supra*; *People v. Jones*, 94 Ill. 2d 275, 447 N.E.2d 161 (1982); *People v. Tiller*, 94 Ill. 2d 303, 447 N.E. 2d 174 (1982), cert. denied, — U.S. —, 103 S.Ct. 2121 (1983). This, of course, is the ultimate principle for which *Enmund* stands.

The state argues,<sup>2</sup> and the majority flirts with, the question of foreseeability. Undoubtedly *Tison* should have foreseen the possibility that there might be a killing in the course of the prison break or the flight which followed. Thus, the majority points out (slip op. at 2) that petitioner "could anticipate the use of lethal force during this attempt to flee confinement." If this is an attempt to apply the tort doctrine of foreseeability to capital punishment cases in order to satisfy the *Enmund* criteria, it must be doomed to failure. Of course, the foreseeable "possibility" that death may occur may grow to a point where, as Justice White indicates, death may be imposed because the defendant "contemplated that life would be taken." *Enmund*, 458 U.S. at 801, 102 S.Ct. at 3379. The United States Supreme Court has not yet had occasion to draw that line and explain the degree of "contemplation" required to impose death, nor have we attempted to do so. No line can be drawn in this case because there is neither evidence nor a finding upon

<sup>2</sup> At oral argument, however, the state conceded that remand for a new sentencing hearing was the best course to follow. In answer to the court's question

Wouldn't the state be better off with specific findings one way or the other . . . ?

the state's attorney responded, with commendable candor:

I think so, and I think, I think it's better for all parties concerned that there be specific findings and in this particular situation I think the trial court ought to make those findings to give this court and perhaps other courts a record from which to operate.

which to base consideration of such an issue. The trial judge found only as follows:

4. Each defendant could have reasonably foreseen that his conduct in the course of the commission of the offense for which he was convicted would cause or create a grave risk of causing death to another person.

That finding is undoubtedly correct and probably is intended to reflect the aggravating circumstance described in A.R.S. § 13-703(F)(3). It would undoubtedly have been correct if applied to Mr. *Enmund*, who sent two armed robbers into a house to commit a robbery and certainly could have foreseen that they might be interrupted during the course of the crime and might kill to save their own lives or to escape. But *Enmund* teaches us that tort foreseeability is not the test. The evidence in this case regarding the reason for the killing of the kidnap victims has not yet been presented, so we cannot tell whether a "bright line" can be drawn between tort foreseeability and "contemplation." All we know here is that the only direct evidence of what the brothers expected when they began the criminal enterprise is the following statement made by Raymond, before being sentenced:

Well, I just think you should know when we first came into this we had an agreement with my dad that nobody would get hurt because we [the brothers] wanted no one hurt. And when this [killing of the kidnap victims] came about we were not expecting it. And it took us by surprise as much as it took the family [the victims] by surprise because we were not expecting this to happen. And I feel bad about it happening. I wish we could [have done] something to stop it, but by the time it happened it was too late to stop it. And it's just something we are going to live with the rest of our lives. It will always be there.

(Aggravation Hearing and Sentencing Transcript, 3/14/79, at 159.)

This, indeed, is meager evidentiary support for this court's finding that defendant intended to kill. The trial judge should impose sentence after an evidentiary hearing on the issue of *mens rea*. The procedure to handle cases such as this is set forth in Rule 32, Ariz. R. Crim. P., 17 A.R.S., which provides:

32.1 . . . any person who has been . . . sentenced . . . may . . . institute a proceeding to secure appropriate relief on the ground . . . that:

g. There has been a significant change in the law applied in the process which led to . . . sentence,

. . . .

32.6(c) The [trial] court shall review the [Rule 32] petition. . . . If . . . it determines that no material issue of fact or law exists which would entitle petitioner to relief under this rule . . . , it may order the petition dismissed . . . . Otherwise, the court shall direct that the proceeding continue and set a hearing. . . .

*Enmund* has changed the law since sentencing in this case. *Enmund* creates an issue as to defendant's *mens rea* with respect to the murder, not just the underlying felony. There has been no hearing on that issue. There has been no trial court decision on that issue. We are a reviewing court, not a fact finder. Without a hearing and a finding by the trial court, there is nothing for us to review.

I would obey the dictate of *Enmund* and require an "individualized consideration" of *mens rea* or intent to kill as a constitutional requirement in imposing the death sentence. 458 U.S. at 798, 102 S.Ct. at 3377. I would follow the rules we have written and procedures we have recognized in other cases to resolve the factual issue before addressing the constitutional issue. Once there

has been a hearing, the trial judge can make the findings required by *Enmund*. Then and only then can we review the record. We should remand for a new sentencing hearing.

---

STANLEY G. FELDMAN, Justice

GORDON, Vice Chief Justice,

I concur with Justice Feldman's dissent.

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FRANK X. GORDON, Vice Chief Justice



SUPREME COURT OF THE UNITED STATES

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No. 84-6075

RICKY WAYNE TISON and  
RAYMOND CURTIS TISON, PETITIONERS

v.

ARIZONA

---

ON PETITION FOR WRIT OF CERTIORARI  
TO THE SUPREME COURT OF ARIZONA

ON CONSIDERATION of the motions of petitioners for leave to proceed *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motions of petitioners for leave to proceed *in forma pauperis* be, and the same are hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

February 24, 1986

# **PETITIONER'S BRIEF**



No. 84-6075

Supreme Court, U.S.  
FILED

1988  
APR. 28

JOSEPH E. SPANIO, JR.  
CLERK

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1985

RICKY WAYNE TISON and RAYMOND CURTIS TISON,  
*Petitioners,*

v.

STATE OF ARIZONA,  
*Respondent.*

On Writ Of Certiorari To The Supreme Court Of Arizona

**BRIEF FOR PETITIONERS**

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**QUESTIONS PRESENTED**

1. Is the December 4, 1984, decision of the Arizona Supreme Court to execute these petitioners in conflict with the holdings of this Court where, in words of that court, petitioners "did not specifically intend that the [victims] die, . . . did not plot in advance that these homicides would take place, or . . . did not actually pull the triggers on the guns which inflicted the fatal wounds, . . ." but where that court fashioned an expanded definition of "intent to kill" to include any situation where a non-triggerman "intended, contemplated or anticipated that lethal force would or might be used or that life would or might be taken in accomplishing the underlying felony"?



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## OPINION BELOW

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## JURISDICTION

The jurisdiction of this Court rests upon 28 U.S.C. § 1257(3), the petitioners having asserted below and asserting here a deprivation of rights secured by the Constitution of the United States.

The original judgments of the Supreme Court of Arizona affirming the petitioners' convictions and sentences were entered on July 9, 1981. Timely petitions for rehearing were denied by the Supreme Court of Arizona on September 10, 1981. The Arizona Supreme Court denied post-conviction relief on October 18, 1984. Timely petitions for reconsideration were denied by the Arizona Supreme Court on December 4, 1984. The joint petition for certiorari was filed on January 16, 1985 and granted on February 24, 1986. — U.S. —, 54 U.S.L.W. 3561 (U.S.).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case also involves the Eighth Amendment to the Constitution of the United States, which provides:

Excessive bail shall not be required nor excessive fines imposed, nor cruel and unusual punishment inflicted. . . .

and the Fourteenth Amendment to the Constitution of the United States, which provides, in pertinent part:

No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves the following provisions of the statutes of the State of Arizona, which are set forth in the Statutory Appendix to this brief: Ariz. Code of 1939, 43-116, in part, Ariz. Rev. Stat. Ann. § 13-139 (1956) (Repealed 1978); Laws of 1912, Ch. 35, § 25, Ariz. Rev. Stat. Ann. § 13-140 (1956) (Repealed 1978); Ariz. Code of 1939, 43-2901, Ariz. Rev. Stat. Ann. § 13-451 (1956) (Repealed 1978); Ariz. Code of 1939, 43-2902, Ariz. Rev. Stat. Ann. § 13-452 (Supp. 1957-1978) (Amended 1973) (Repealed 1978); Ariz. Code of 1939, 43-2903, Ariz. Rev. Stat. Ann. § 13-453 (Supp. 1957-1978) (Amended 1973) (Repealed 1978); Laws of 1973, Ch. 138, § 5, Ariz. Rev. Stat. Ann. § 13-454 (Supp. 1957-1978) (Repealed 1978). These statutes were in effect at the time of the crimes for which the petitioners stand convicted. The statutes were then repealed and replaced when Arizona revised its criminal code, effective October 1, 1978.

### STATEMENT OF THE CASE

Petitioners Ricky and Raymond Tison were sentenced to death for killings they neither committed nor specifically intended. Ricky and Raymond were convicted of breaking their father Gary Tison and his jailmate Randy Greenawalt out of prison.<sup>1</sup> They were 18 and 19 years old at the time of the

<sup>1</sup>In a separate trial from those in which they received the death penalty, Ricky and Raymond Tison were both convicted in Pinal County, the site of the prison, of aiding and assisting in an escape, assault, possession of a stolen vehicle, and unlawful flight from a law enforcement vehicle. They received concurrent sentences of 30 years to life for each of the assaults, and sentences of four to five years for each of the other offenses, to be served concurrently with each other but consecutively to the assault sentences. *State v. Greenawalt*, 128 Ariz. 388, 626 P.2d 118, 121, cert. den. sub nom., *Tison v. Arizona*, 454 U.S. 848 (1981). Throughout this litigation, Petitioners have raised

breakout. Neither had any prior felony convictions.<sup>2</sup> They lived at home with their mother and older brother Donald, and visited their father nearly every week during his eleven-year imprisonment preceding the breakout. (Transcript of March 14, 1979 at 103, 105-06, 110, 112, 124.) During those eleven years, Gary Tison was a model prisoner who ran the prison newspaper and assisted the prison administration in quieting a riot and strike in 1977. (Transcript of March 14, 1979 at 127-32, 137-38.)

Despite his excellent prison record, Gary Tison was refused parole. (Tr. March 14, 1979 at 140.) He planned an escape, with the help of his brother Joseph, his three sons, their mother and other relatives.<sup>3</sup> According to the psychologist appointed by the sentencing court to evaluate petitioners prior to sentencing, "there was a family obsession, the boys were 'trained' to think of their father as an innocent person being victimized . . ." (See, *infra*, n.16).<sup>4</sup> Originally it was not intended for the three sons to participate in the breakout (J.A. 50, J.A. 91), but eventually they decided to become involved after receiving an assurance from their father that no shots would be fired.<sup>5</sup> And indeed no shots were fired during the breakout. (J.A. 291)

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numerous constitutional challenges to their convictions as well as their death sentences. Without waiving any of the other issues—some of which require development of the record through habeas corpus—they sought certiorari at this stage on the constitutionality of the death penalty for defendants who neither killed nor intended to kill.

<sup>2</sup>Their only prior brush with the law was a misdemeanor charge of petty theft for taking a case of beer, for which they were required to clean up 6 miles of highway. (J.A. 233-34)

<sup>3</sup>Gary's brother Joseph obtained the automobile and some guns used in the escape. (J.A. 50-52, J.A. 91) Dorothy Tison, Gary's wife and the boys' mother, was subsequently charged in connection with the escape, pleaded *nolo contendere* to a charge of conspiracy to assist in the escape and served nine months in prison. *State v. Tison*, Cr. No. 108352 (Maricopa County).

<sup>4</sup>The report continued that "both boys have made perfectly clear that they were functioning of their own volition [but] at a deeper psychological level it may have been less of their own volition than as a result of Mr. Tison's 'conditioning' and the rather amoral attitude within the family home" See, *infra*, n.16.

<sup>5</sup>Raymond Tison stated prior to his sentencing, "Well, I just think you should know when we first came into this we had an agreement with my dad



Two days later, the car that was used for the escape—a Lincoln—experienced a second flat tire, thus incapacitating it. (J.A. 130, J.A. 311) A decision was made to try to flag down a car to use to continue the escape.<sup>6</sup> The car that was stopped—a Mazda—contained the Lyons family, consisting of a husband, a wife, a baby and a niece named Theresa Tyson (no relation to petitioners.). (*Id.*)

Both automobiles were driven down a dirt road off the highway. (J.A. 131) The family was then placed by the side of the road, and the Tisons' possessions were placed in the Mazda. (*Id.*) The Lincoln was then driven 50 to 75 yards further into the desert. (*Id.*) To ensure that the family would not be able to move the Lincoln and alert the authorities, Gary further incapacitated the Lincoln by firing into the car's radiator. (J.A. 39, J.A. 131) Those were the first shots that were fired during the entire episode.

The father, Gary Tison, then told his sons to go back to the Mazda and fetch a jug of water for the Lyons family. (J.A. 40, J.A. 131) This combination of actions—further disabling the Lincoln and sending his sons to fetch water for the Lyons family—was plainly intended to communicate to Ricky, Raymond, and Donnie the reassurance that the Lyons family would not be killed. If there had been a plan to kill them, there would have been no need to waste ammunition in further incapacitating the car or to waste water on people who were going to be murdered. The sentencing court itself found that, "It was not essential to the defendants' continuing evasion of arrest that these persons were murdered." (J.A. 283) Thus, the very "senselessness" of the killings made them unpredictable to Ricky and Raymond. (J.A. 283)

While in the process of fetching the jug of water, the Tison brothers were shocked to hear the sounds and see the flashes of

that nobody would get hurt because we [the brothers] wanted no one hurt." (J.A. 359) There is nothing in the record which in any way contradicts that statement.

<sup>6</sup> "... wanting to signal somebody down, flag somebody down and take their vehicle." (J.A. 35) "And then he [Gary Tison] came up with a plan—you know, just take another car . . ." (J.A. 62)

gunshots in the dark night as their father and Randy Greenawalt opened fire and shot the Lyons family. (J.A. 75, J.A. 131)<sup>7</sup> Either their father had changed his mind at the last minute without telling his sons, or he had deliberately misled them into believing that the Lyons would be left alive with water in the incapacitated Lincoln.<sup>8</sup>

<sup>7</sup>As Justices Feldman and Gordon pointed out in their dissenting opinion, the only evidence in the record relating to the state of mind of the sons was the following statement by Raymond:

Well, I just think you should know when we first came into this we had an agreement with my dad that nobody would get hurt because we [the brothers] wanted no one hurt. And when this [killing of the kidnap victims] came about we were not expecting it. And it took us by surprise as much as it took the family [the victims] by surprise because we were not expecting this to happen. And I feel bad about it happening. I wish we could [have done] something to stop it, but by the time it happened it was too late to stop it. And it's just something we are going to live with the rest of our lives. It will always be there.

(J.A. 377; ellipses from opinion.)

<sup>8</sup>There is no ambiguity in the record about the fact that the father, Gary Tison, shot into the radiator of the Lincoln "to make sure it wasn't going to run." (J.A. 108) Nor is there any ambiguity about the fact that Gary Tison specifically told his sons to "get a jug of water for these people"—the Lyons family. (J.A. 75, J.A. 109) Neither is there any ambiguity about the fact that all of the shooting was done by Gary Tison and Randy Greenawalt. (J.A. 112-13) The only ambiguity in the record is precisely how close the Tison sons were to the Lincoln when Gary Tison and Randy Greenawalt suddenly began to shoot into it. Raymond recalled being at the Mazda filling the water jug "when we started hearing the shots." (J.A. 21) Ricky believed that they were "headed toward the Lincoln to give it [the water] to the Lyons family" when the tragic events began: the father took the jug and he and Randy Greenawalt "went behind the Lincoln, spoke briefly, raised their shotguns and started firing." (J.A. 41, J.A. 112) It is impossible to determine whose recollection was more precise and no real effort was made to do so at the trial, since nothing turned on the physical proximity of the sons to the killers as they fired their shots. There is nothing in the record to contradict the statements of both sons that the shooting was sudden and unexpected and that they were not in a position to prevent it. Nor is there anything in those portions of the record cited by the State in its Response to Joint Petition for Writs of Certiorari ("State's Response") that contradicts the fundamental reality that Ricky and Raymond did not kill, plan the killings, or intend that the victims die. (State's Response at 11.)

The State argued that petitioners and their father "began planning the escape a couple of years before it actually happened." (State's Response at 1.) This assertion misleadingly summarizes Ricky Tison's statement. Ricky stated that he and his brother had had "thoughts" about his father's getting out of prison for years, but had become involved in the actual escape plan only a week before the escape. (Exhibit 1 to State's Response at 8.) Furthermore,

It was for these murders—which were neither committed by Raymond or Ricky Tison nor specifically intended or planned

a "couple of years" before the escape, Raymond and Ricky would have been at most 15 and 16 years old, respectively, and hardly in a position to plan a prison break. Similarly, when Gary Tison killed a prison guard in 1967, Raymond and Ricky were eight and nine years old, respectively. (J.A. 223, J.A. 253). Their lack of comprehension of the significance of the event at the time was compounded by their experience with their father during the ensuing eleven years, during which time he was a model prisoner and maintained a close relationship with his family. See, *infra*, n.16 and Tr. March 14, 1979, at 132-33.

Additionally, the State claimed "While it has never been proved that either petitioner fired any of the fatal shots, the evidence suggests that Ricky Tison's weapon was used to fire two rounds near the Lincoln (Exhibits 5 and 6)." (State's Response at 7.) That the State even mentions this point demonstrates how weak its position is with respect to petitioners' culpability. Exhibits 5 and 6 to the State's Response only indicate (a) two .45 caliber shells were found near the Lincoln, and (b) at one time Ricky Tison had bought a .45 caliber gun. There is no evidence as to when the gun was fired (no bullets were ever found), what the gun was used for, or who fired it. There is no basis for the State to insinuate that Ricky Tison had any personal involvement in the killings and, indeed, the prosecution, the sentencing judge and the Arizona Supreme Court have all specifically held to the contrary. At Ricky's trial, the prosecutor argued that "He was an aider and abettor. He conspired with the persons who did the murders." (J.A. 152) And at Raymond's trial, the prosecutor acknowledged that "those other persons killed somebody . . ." (J.A. 191) The sentencing judge found as a mitigating circumstance that he was "convicted of four murders under the felony murder instructions." (J.A. 285) The Arizona Supreme Court has acknowledged on two separate occasions that there is no evidence that he participated in the killings. (J.A. 341, J.A. 364) The state's apparent inference to the contrary at this stage of the case is simply not credible and should be given no further consideration by this Court.

The State also points to a statement by Ricky that he heard his father tell the Lyons that he (the father) was "thinking about" killing them. But the record is clear that it was after this that the father decided to send his sons to get the jug of water, thus telling Ricky in effect that he (the father) had decided not to kill them.

Finally, the Arizona Supreme Court cited a hypothetical statement made by Raymond in the presentence report to the effect that he would have killed in a very close situation. This is how the court characterized Raymond's statement:

... he later said that during the escape he would have been willing personally to kill in a "very close life or death situation," and that he recognized that after the escape there was a possibility of killings.

(J.A. 346) This is the actual statement from the presentence report:

When I asked the defendant if he ever thought when they were planning the break out at the prison, if someone might possibly get killed in prison. He stated, that they had informed their father that was one

by them—that Raymond and Ricky Tison were sentenced to the penalty of death.

Several days after Gary Tison and Randy Greenawalt killed the Lyons family, the group was apprehended at a roadblock near Casa Grande, Arizona.<sup>9</sup> The oldest brother, Donnie Tison, was shot in the head during the apprehension and died from his injuries. Ricky, Raymond and Randy Greenawalt were

condition that they would have to go by, that no one get hurt. I then explained to him that entering a prison with loaded weapons was a pretty "gutty" thing to do. He stated, "We had no intention to shoot anybody." He then continued by stating, "Who ever said those guns were loaded." I then pointedly asked him, "Were they, Raymond?" He said, "Well, yes they were, in case something happened." This Officer asked, "Raymond could you have shot somebody if the whole deal had gone sour?" He asked, "At the Prison." And I said, "Yes." He said, "It would have had to have been a very close life or death situation. I could not cold-bloodedly killed someone, no. Still I think I would have had some hesitation about killing anybody. I just never really thought of it." He continued by stating, "To kill all those people at the prison would have been a senseless killing, that is something I did not want. I asked him, "Well when it started out why did you think you needed weapons?" He stated, "Just strictly psychological."

(J.A. 248) It is clear from the context that the dominant message was that he "had no intention to shoot anybody," that he would have had some "hesitation about killing anybody," and that he "just never really thought of it." In any event, there is no suggestion anywhere in the record that either petitioner ever contemplated the cold-blooded killing of an innocent family.

The dissenting Justices evaluated the record and arrived at the following conclusions:

The only evidence on the issue indicates that before the killings both of the Tison brothers had been sent back to the victims' car by their father and were some distance away from the actual place at which the killings occurred. (Statements of Ricky Tison, 1/26/79 at 13 and 2/1/79 at 35; Statements of Raymond Tison, 1/26/79 at 18 and 2/1/79 at 42). There is neither a finding from the trial court nor evidence to establish that defendant was in a position to prevent the killing, if he had wanted to. There is evidence that although defendant was "worried" about his father's intentions toward the kidnap victims, he did not know what was going to happen until, from the other car some distance away, he and his brother presumably heard the first shot, turned and saw the killings. (Statements of Ricky Tison, 1/26/79 at 9 and 13; Statement of Raymond, 1/26/79 at 18).

(J.A. 366, J.A. 374). Nothing in the majority opinion specifically disputes any of these record facts.

<sup>9</sup>On August 10, 1978, Gary Tison, Randy Greenawalt, Donnie Tison, and petitioners were apprehended at a roadblock near Casa Grande, Arizona. Randy Greenawalt and petitioners were arrested and incarcerated. They were tried together and convicted in Pinal County for their part in the prison breakout. *State v. Greenawalt*, 128 Ariz. 388, 636 P.2d 118, cert. denied *sub nom. Tison v. Arizona*, 454 U.S. 848 (1981).



arrested. Gary Tison, the father, initially escaped, but was found two weeks later dead of exposure in the desert. (J.A. 319, J.A. 321)

The three surviving defendants were tried together for crimes committed during the breakout. They were convicted and sentenced to long prison terms.<sup>10</sup> Each was then tried separately for the four murders, convicted and sentenced to death.

Prior to sentencing, the judge issued an order appointing Dr. James A. MacDonald, a clinical psychologist, to interview, test and evaluate the defendants.<sup>11</sup> After a battery of tests and extended interviews with the boys and their mother, Dr. MacDonald concluded that "these two youngsters . . . were obsessed with their father's release," that "their father, Gary Tison, exerted a strong, consistent, destructive but subtle pressure upon these youngsters," and that "these young men got committed to an act which was essentially 'over their heads.' Once committed," he continued, "it was too late. . . ." (see, *infra*, n.16)<sup>12</sup> Dr. MacDonald concluded that "these youngsters have a capacity for rehabilitation" and he recommended a "structured and controlled setting." (See, *infra*, n.16.)

The Chief Adult Probation Officer, after an extensive review of the entire record, concluded that "this defendant did not actively participate in the murder of the Lyons family and Theresa Tyson, except to drive them to the scene." (J.A. 252) He was "torn between recommending the maximum or lighter sentence" and so he made no recommendation. (J.A. 252, J.A. 269)

<sup>10</sup>See, *infra*, n.1.

<sup>11</sup>Dr. MacDonald was not appointed as a defense expert but rather as a court expert.

<sup>12</sup>Dr. MacDonald also concluded that there "does not appear to be any true defense based on brainwashing, mental deficiency, mental illness, or irresistible urge," but that "at a deeper psychological level it may have been less of their own volition than as a result of Mr. Tison's 'conditioning' and the rather amoral attitudes within the family home." See, *infra*, n.16.

Even though neither of the professional evaluators recommended the death penalty, the trial judge imposed it on these two young men. He found three aggravating factors and three mitigating factors. The aggravating factors were: 1) that the "persons among the defendants who fired the fatal shots fired indiscriminately and excessively" and thus "knowingly created a grave risk to other persons in addition to" John Lyons and Donnelida Lyons,<sup>13</sup> 2) that the defendants committed the offenses for "pecuniary" reasons, namely to take the car; and 3) that the actual killers murdered their victims in "an especially heinous, cruel and depraved manner," based on "the senselessness of the murders," since it "was not essential to the defendants' continuing evasion of arrest that these persons were murdered." (J.A. 281-83; emphasis added.)

Thus, only the second aggravating factor—pecuniary motive—related to these petitioners, who did not themselves kill the victims.<sup>14</sup> The first and third factors related specifically to the actual triggermen, who themselves chose the manner and extent of the shootings. Indeed, the sentencing judge used the same language in describing the aggravating factors found against the Tison brothers—who neither killed, planned to kill, nor specifically intended that the victims die—as he used in finding these same three aggravating factors against Randy Greenawalt, who deliberately murdered the victims. (J.A. 281-83)<sup>15</sup>

<sup>13</sup>The sentencing court's theory was apparently that Gary Tison and Randy Greenawalt intended to murder only John Lyons and Donnelida Lyons and that they created a risk to the other two people they also murdered.

<sup>14</sup>Even the "pecuniary" factor hardly seems to fit the actions and motives of the petitioners. Their crime was motivated by an obsession to break their father out of prison and be reunited with him, rather than by pecuniary considerations. Stealing a car was not part of the original plan, and resulted from the unanticipated flat tires during the escape. (J.A. 311)

<sup>15</sup>The Court found that the following aggravating circumstances applied to Randy Greenawalt:

"3. In the commission of the murders of John Lyons and Donnelida Lyons, the defendant knowingly created a grave risk of death to other persons in addition to those victims. The person or persons among the defendants who fired the fatal shots fired indiscriminately and excessively as evidenced by the number of spent shotgun shell casings found in the immediate vicinity of the Lincoln and the number of fatal wounds sustained by John Lyons and Donnelida Lyons. The location of the fatal

The three mitigating factors found by the sentencing court were: 1) the youth of the petitioners; 2) the absence of any prior felony record; and 3) the fact that they were convicted of murder under a felony murder instruction which did not require a finding of intent. (J.A. 285)

wounds of John Lyons and Donnelida Lyons, head and chest wounds, contrasted with the fatal hip wound sustained by Teresa Tyson, is evidence that Teresa sustained that wound as a result of the indiscriminate shooting. The position of the body of Christopher Lyons standing between his mother's legs and his fatal head wound is consistent with finding his wound was incidental to his mother's fatal chest wound.

"4. The defendant committed the offenses as consideration for the receipt or in the expectation of the receipt of something of pecuniary value; namely, the taking of the automobile and other property of the victims John and Donnelida Lyons.

"5. The defendant committed the offenses in an especially heinous, cruel and depraved manner. This finding is based on the evidence that the victims' vehicle was stopped, they and the vehicle were moved from the highway into the desert, and some, if not all, of the victims were placed in the Lincoln automobile where at least Donnelida Lyons and Christopher Lyons were murdered. Clearly the fatal wounds of John Lyons and Teresa Tyson were inflicted in or near the Lincoln. The conclusion is inescapable that all the victims were moved from the highway under force and, considering the arsenal possessed by the defendants and the manner in which the victims were killed, very probably at gunpoint. Necessarily John Lyons, Donnelida Lyons, and Teresa Tyson had time to become and must have become apprehensive about their welfare and that of Christopher at first and ultimately about all their lives before the fatal shots were fired. The stress and fear each must have initially experienced had to have grown to immense, almost unimaginable proportions before they were murdered. And it is not unreasonable to conclude that one or more of the victims witnessed the murder of the others before his or her turn came, and that very likely, from where they were bound, Teresa Tyson and John Lyons were those witnesses. The emotions certainly experienced by John Lyons, Donnelida Lyons and Teresa Tyson in those last minutes of their lives were the equivalent to the severest physical torture.

"This finding is also based on the senselessness of the murders. It was not essential to the defendant's continuing escape and evasion of arrest that these persons be murdered. The victims could have easily been restrained sufficiently to permit the defendant to travel a long distance before the robberies, the kidnappings, and the theft were reported. And in any event the killing of Christopher Lyons, who could pose no conceivable threat to the defendant, by itself compels the conclusion that it was committed in a depraved manner."

Tr. of March 26, 1979, r. 1141-44. *State v. Greenwalt*, 128 Ariz. 150, 624 P.2d 628, cert. denied, 454 U.S. 882 (1981), rev'd sub nom. *Greenwalt v. Ricketts*, No. 84-2732 (9th Cir. March 20, 1985); compare this language to J.A. 281-83.

The Court found as additional aggravating factors that Greenwalt had been previously convicted of murder and armed robbery. *Id.* at 1140-41.

On direct appeal, the Arizona Supreme Court reversed the finding of the first aggravating factor relied on by the sentencing judge, concluding that the evidence did not support the hypothesis that the defendants who fired the shots deliberately created a grave risk to others. (J.A. 303) It affirmed the pecuniary finding and the finding that the shootings were committed in an "especially heinous, cruel, or depraved manner." (J.A. 301) It rejected petitioners' argument that there were other mitigating factors in addition to the three found by the sentencing judge. (J.A. 305) Among the mitigating factors not found by the sentencing judge and raised on appeal, was petitioners' claim that the "psychological reports on his mother and himself establishes the strong, manipulative influence [their] father, Gary Tison, had on [them]." (J.A. 339) The Arizona Supreme Court concluded that "the report does not support this argument" (J.A. 339), though a fair reading of the entire report—which is reproduced in footnote 16 below—demonstrably does support petitioners' contention that (in the words of the report itself) "their father, Gary Tison, exerted a strong, consistent, destructive but subtle pressure upon these youngsters" and that "these young men got committed to an act which was essentially 'over their heads.'" Although such pressure might not constitute a "true defense," it surely cannot be ignored—as it was by the lower courts—as a mitigating factor in a life or death decision.<sup>16</sup>

<sup>16</sup>The full text of Dr. MacDonald's report to the sentencing court, which was part of the record on appeal, is as follows:

Dear Judge McBryde,

Enclosed please find three copies of the documents pertaining to the Tison boys as set forth in your order of January 10, 1979.

This included a lengthy social history taken by Mrs. Tison, review of school and hospital records, approximately 4 to 5 hours spent with each boy and a full and extensive psychological battery.

These young men represented a considerable diagnostic challenge and due to the nature of the case I proceeded slowly and attempted to work the entire psychological battery through a most cautious and careful manner.

The bottom line appears to be that these are two youngsters who were obsessed with their father's release but the obsession can not be considered an irresistible impulse. There is no sign of psychosis or mental defect other than the mild antisocial personalities. These most unfortunate youngsters were born into an extremely pathological family and



On direct appeal prior to this Court's decision in *Enmund v. Florida*, 458 U.S. 782 (1982), petitioners also argued that—in the court's own words—"the imposition of the sentence of death upon an individual convicted under a felony murder theory without evidence that he was the actual perpetrator of the homicide or intended that the victim should die is grossly disproportionate and violates the prohibition against cruel and unusual punishment contained in the Eighth Amendment of the United States Constitution." (J.A. 293-294) The court decided that issue adversely to both petitioners, concluding as

were exposed to one of the premier sociopaths of recent Arizona history. In my opinion this very fact had a severe influence upon the personality structure of these youngsters, coupled with the cold, long suffering martyr-type personality of Mrs. Tison. Under other circumstances these youngsters may have been referred to the juvenile court for bicycle theft, mischief, etc., and would have never become involved in the horrendous criminal events which followed the escape in July of 1978.

The question of rehabilitation and their potential for rehabilitation looms large. I do not pretend to know legal processes and/or legal possibilities but I do believe, over time, that these youngsters have a capacity for rehabilitation if placed in a structured and controlled setting. Due to their youth, their naivety, their basic immaturity, poor judgment and lack of common sense these youngsters are easily led and easily manipulated. If at all possible it would be in their best interest to segregate them in any prison setting, if possible, from older, more hardcore prisoners. Ricky, in particular, is probably susceptible to sexual assault as it appears from the vast amount of testing accomplished that Ricky is experiencing some significant psychosexual difficulties and in my opinion could be "used" sexually by unscrupulous prisoners. Due to the youth and the lack of sophistication on the part of both these boys I would urge that some consideration be given to the conditions of their incarceration.

I do believe that their father, Gary Tison, exerted a strong, consistent, destructive but subtle pressure upon these youngsters and I believe that these young men got committed to an act which was essentially "over their heads." Once committed, it was too late and there does not appear to be any true defense based on brainwashing, mental deficiency, mental illness or irresistible urge. There was a family obsession, the boys were "trained" to think of their father as an innocent person being victimized in the state prison but both youngsters have made perfectly clear that they were functioning of their own volition. At a deeper psychological level it may have been less of their own volition than as a result of Mr. Tison's "conditioning" and the rather amoral attitudes within the family home.

Thank you for your attention to this note and I certainly appreciated the opportunity to work with these interesting and extremely challenging young men and I am grateful for the opportunity to be of service to the Superior Court.

Sincerely yours,

James A. MacDonald, Ph.D.

follows: "That they did not specifically intend that the Lyons and Theresa Tyson die, that they did not plot in advance that these homicides would take place, or that they did not actually pull the triggers on the guns which inflicted the fatal wounds is of little significance." (J.A. 340-341)

The record in this case compels a conclusion even stronger than that petitioners did not specifically intend that the victims die; the uncontradicted record evidence establishes that Raymond and Ricky Tison affirmatively intended and affirmatively believed that no one would be killed, and that they were taken by complete surprise when their father either changed his mind suddenly or tricked his sons into believing that the Lyons would be left alive with water in the incapacitated car.

Following this Court's decision in *Enmund v. Florida*, *supra*, the Arizona Supreme Court, on collateral review, reiterated its original conclusion that "the evidence does not show that petitioner[s] killed or attempted to kill." (J.A. 345, J.A. 364) Nor did it make any findings inconsistent with its original conclusion that petitioners "did not specifically intend that the [victims] die. . . ." (J.A. 340) However, the court then fashioned a new and expanded legal definition of "intent" designed to fit the facts of this case: "[I]ntended to kill includes the situation in which the defendant intended, contemplated, or anticipated that lethal force would or *might* be used or that life would or *might* be taken in accomplishing the underlying felony." (J.A. 345, J.A. 363; emphasis added.) The court then held—by a 3 to 2 vote—that the evidence established beyond a reasonable doubt that petitioners "intended to kill," within its new definition, and that they could thus be executed under *Enmund*.

Justice Feldman and Vice Chief Justice Gordon, in a strongly worded dissent, argued "Even if we ignore the previous contrary conclusion, today's holding is remarkable because there is no direct evidence that either of the brothers intended to kill, actually participated in the killing or was aware that lethal force would be used against the kidnap victims." (J.A. 353, J.A. 371) Even the State has admitted that "At no time has [the

Arizona Supreme] Court held that either petitioner actually killed any of the four victims or that either petitioner planned any of the killings. . . . The original conclusion that petitioners harbored no specific intent to kill remains unchanged." (State's Response at 11.) Thus, Ricky and Raymond Tison stand sentenced to die despite the agreement by all concerned that these young men, with no prior felony records, neither killed, attempted or planned to kill, nor specifically intended that death occur.<sup>17</sup>

### SUMMARY OF ARGUMENT

The instant case is factually indistinguishable from *Enmund v. Florida*, 458 U.S. 782 (1982). In an effort to avoid the governing effect of that authority, the Arizona Supreme Court fashioned an expanded new definition of the "intent to kill" required for a non-killer defendant to be subject to the death penalty. Under this new definition, a non-killer who neither planned nor specifically intended that the victims die, is eligible for execution if he "intended, contemplated or anticipated that the lethal force would or might be used or that life would or might be taken. . . ." (J.A. 345; emphasis added.)

This definition—which attempts "to apply the tort doctrine of foreseeability to capital punishment in order to satisfy the *Enmund* criteria" (J.A. 376)—is so broad, vague and open-minded that it would dramatically expand the category of those eligible for execution so as to include many (like petitioners) who are far less personally culpable than many who are not sentenced to die. Because judges and juries will continue to impose the death penalty only "rarely" on "one vicariously guilty of the murder" (*Enmund v. Florida*, 458 U.S. at 800), the disparity will increase between those sentenced to death and those not sentenced to death for crimes which are indistinguishable in principle.

The Arizona Supreme Court's decision thus violates the holdings of *Enmund*, *Godfrey* and other governing decisions.

<sup>17</sup>For a listing of the other mitigating factors—not considered by the lower courts—see, *infra*, at 43-45.

If allowed to stand, it would permit the execution of two young men, with no prior felony records, whose personal culpability is indistinguishable in principle from that of *Enmund* and *Godfrey*. These young men, who were "trained" to believe their father was innocent, "got committed to an act which was essentially 'over their heads,'" and agreed to help older family members break their father out of prison only after their father—who "exerted a strong, constant, destructive but subtle pressure upon these youngsters"—promised them that no one would be hurt. Moments before the shootings, they were affirmatively led to believe, by the words and actions of their father, that the occupants of the disabled car would be left alive with a jug of water. They were surprised at the sudden decision of their father and his jailmate to shoot the victims, and they could do nothing to stop it.

No one in the recent history of this country has ever been executed where the personal aggravating factors have been so few and weak and the mitigating factors so many and strong. Petitioners' sentences of death violate the Eighth Amendment and should be reversed.

### ARGUMENT

#### I. THE EXECUTION OF RAYMOND AND RICKY TISON WOULD VIOLATE THE EIGHTH AMENDMENT AND THIS COURT'S DECISION IN *ENMUND V. FLORIDA*.

In *Enmund v. Florida*, this Court imposed a substantive constitutional limitation on the states' power to impose the death penalty in cases where the defendant "neither took life, attempted to take life, nor intended to take life." 458 U.S. 782, 787 (1982). It held that the Eighth Amendment to the United States Constitution prohibits the imposition of the death penalty on an armed robber who did not himself either kill or personally intend that a killing take place. Neither the fact that armed robbery is a serious or dangerous crime, nor the fact that under Florida law *Enmund* was guilty of capital murder, allowed the state, in imposing the death penalty, to ignore the difference in culpability between *Enmund* and those who actually and intentionally killed.



This case is plainly controlled by *Enmund*. Here, as in *Enmund*, the defendants did not themselves kill. Here, as in *Enmund*, the prosecution's case was tried under a theory of vicarious liability for felony murder. Here, as in *Enmund*, the state supreme court itself concluded that the petitioners "did not specifically intend that the [victims] die, . . . did not plot in advance that these homicides would take place, or . . . did not actually pull the triggers on the guns which inflicted the fatal wounds. . . ." (J.A. 340-41) Here, as in *Enmund*, the judgment upholding the death penalty must be reversed.

#### A. *Enmund v. Florida* Requires Reversal.

Earl Enmund was convicted of the felony murder of an innocent family which was the victim of an armed robbery. The evidence in that case established that Enmund was stationed in a nearby car, waiting to help the killer escape. After the convictions were obtained, the trial court found four statutory aggravating circumstances regarding the petitioner's involvement,<sup>18</sup> and no mitigating circumstances, emphasizing that Enmund's participation in the murder had been major in that he "planned the capital felony and actively participated in an attempt to avoid detection by disposing of the murder weapons." *Enmund v. State*, 399 So.2d at 1373 (1981), *rev'd*, 458 U.S. 782 (1982). On appeal, the Florida Supreme Court held that the jury could have plainly inferred from the evidence that "Enmund was there, a few hundred feet away, waiting to help the robbers escape," and that this was sufficient to find the petitioner to be constructively present and a principal in the murders under state law. *Id.*

It was in these circumstances that this Court held that the death penalty could not constitutionally be imposed. This Court's opinion comprehensively surveyed "society's rejection of the death penalty for accomplice liability in felony murders," noting that most legislatures, judges, and juries have generally

<sup>18</sup>On appeal, two of the aggravating circumstances were rejected by the Florida Supreme Court, while the finding of no mitigating circumstances was affirmed. *Enmund v. State*, 399 So.2d 1362, 1373 (1981), *rev'd*, 458 U.S. 782 (1982).

rejected the imposition of the death penalty for individuals like Earl Enmund and Raymond and Ricky Tison.<sup>19</sup> The Court then reached that same conclusion as a "categorical rule" of the Eighth Amendment. *Cabana v. Bullock*, \_\_\_ U.S. \_\_\_, 106 S.Ct. 689, 697 (1986). The Court recognized the fundamental precept that "causing harm intentionally must be punished more severely than causing the same harm unintentionally," and held that the state had violated the United States Constitution in treating alike both Enmund and those who killed and in attributing to Enmund the culpability of those who killed. *Enmund v. Florida*, 458 U.S. at 798. "For purposes of imposing the death penalty," this Court concluded, "Enmund's criminal culpability must be limited to his participation in the robbery, and his punishment must be tailored to his personal responsibility and moral guilt." *Id.* at 801.

The imposition of the death penalty on Raymond and Ricky Tison would plainly violate that constitutional mandate. Raymond and Ricky were admittedly convicted of participating in serious crimes which sometimes pose a risk to human life. But so was Earl Enmund: it is precisely because armed robbery presents a risk to human life that it is punished more severely than unarmed robbery, and included in those felony murder statutes which, like the ALI Model Penal Code, are limited to inherently dangerous felonies. See, ALI Model Penal Code §210 and Commentaries. And, again like Earl Enmund, Raymond and Ricky were convicted and punished based not on proof that they themselves intended death, but rather based on the superimposition of legal constructs one upon the other: "The interaction of the 'felony-murder rule and the law of principals [or vicarious liability] combine to make a felon generally responsible for the lethal acts of his co-felon." *Enmund v. Florida*, 458 U.S. at 787.

The jury instructions in this case leave no doubt that the convictions required no finding of the intent to kill necessary for the imposition of the death penalty under *Enmund*, and the

<sup>19</sup>See *Enmund v. Florida*, 458 U.S. at 789-96 (Court's description and analysis of the data).

record of these cases would have precluded any such finding. In both cases, the jury was charged that aiders and abettors, "though not present," as well as conspirators, are responsible as principals for the commission of an offense (J.A. 177-79, J.A. 216-19), and that "a murder committed in avoiding a lawful arrest or effecting an illegal escape from legal custody or in perpetration of or an attempt to perpetrate robbery or kidnapping is murder of the first degree whether willful and premeditated or accidental." (J.A. 180, J.A. 220). Thus the prosecutor was able to argue that if petitioners aided or abetted in the prison escape, they were guilty of the Lyons' murders even though they neither pulled the trigger nor caused the killings in any way.<sup>20</sup> In fact, the prosecutor argued at Ricky's trial that "[t]here is *no requirement that the defendant caused the killings*" (J.A. 173; emphasis added) and at Raymond's trial that "in this case we have a situation where the defendant is a conspirator with other persons *and those other persons killed somebody during these offenses*, during a robbery, kidnap, avoiding or preventing lawful arrest, or escape" (J.A. 191; emphasis added). See J.A. 133-36, J.A. 185, J.A. 208-9. Once Ricky and Raymond Tison were convicted of first degree murder under the combined action of Arizona's vicarious responsibility and felony murder rules, they became eligible for the death penalty despite their lack of personal involvement in the murders themselves. See Ariz. Rev. Stat. Ann. §§ 13-452, 13-453, Statutory Appendix at 1a-2a.

Indeed, if anything, the facts of this case present stronger grounds for reversal of the death penalty than *Enmund* itself. In *Enmund*, reversal was mandatory because the record did not affirmatively establish *Enmund's* intent to kill. Here by contrast, the record includes substantial evidence that the boys affirmatively intended that *no one be killed*, and that they were either misled by their father, or that he suddenly changed his mind. In *Enmund*, the court not only found that the petitioner actively participated in the planning and concealing of

<sup>20</sup>Indeed, under this instruction and the reasoning of the courts below, petitioners' mother could have received the death penalty for her role in the escape, a role for which she served nine months in jail. See, *supra*, n.3.

the crime, but that he was a convicted prior felon with a pecuniary interest in the robbery. See *Enmund v. Florida*, 458 U.S. at 785. Here, by contrast, we are faced with two teenage boys, with no felony records, with the natural ties and affection boys feel for their father.<sup>21</sup> Indeed, the State itself conceded, in opposing review in this Court, that the Arizona Supreme Court has agreed "that petitioners harbored no specific intent to kill," but continued to argue, erroneously, that the distinction was not constitutionally significant. (State's Response at 11.)

In upholding these convictions on direct review, the Arizona Supreme Court reached precisely the conclusion that this Court reversed in *Enmund*: "that they did not specifically intend that the [victims] die, that they did not plot in advance that these homicides would take place, or that they did not actually pull the triggers on the guns which inflicted the fatal wounds. . . ." (J.A. 340-41) But it found these facts to be "of little significance." (J.A. 341) The absence of specific intent, that is, a showing of a "conscious purpose" to cause death, may well be "of little significance" in Arizona for purposes of defining the crime of felony-murder. *Enmund* does not limit the state of Arizona's freedom to classify as murder, accessorial conduct which lacks specific intent to kill.<sup>22</sup> But what is of little

<sup>21</sup>See, *supra*, n.16.

<sup>22</sup>Federal cases are unanimous in requiring a community of unlawful purpose at the time the deadly act was committed. See generally, Corpus Juris Secundum, Criminal Law §§87, 88, and Homicide §9(d), and cases cited therein. Where a particular intent is an element of the felony it is essential that one aiding and abetting the commission of such offense should have been aware of the existence of such intent in the mind of the actual perpetrator of the felony. See, e.g., *Sanders/Miller v. Logan*, 710 F.2d 645 (10th Cir. 1983) and cases cited therein; *Acker v. State*, 26 Ariz. 372, 226 P. 199 (1924) ("A crime in which intent is an element cannot be aided innocently"). In *Sanders/Miller*, the court held that to find one guilty of murder for aiding and abetting one must prove the accused acted with "full knowledge of the intent of the persons who commit the offense." Significantly, and quite correctly, the court cites this Court's opinion in *Enmund* as support for this very proposition. *Enmund* supports this proposition in that it mandates a finding of a conscious purpose to cause death on the part of the non-triggerman. This is equivalent to asserting that a non-triggerman must share the intent of the actual killer at the moment of the killing.

The ALI Model Penal Code Commentary, in describing accomplice liability, is unequivocal on this point. The term "accomplice" only applies when



significance for liability is, under *Enmund*, constitutionally determinative of whether the most extreme penalty of death can be imposed. See, *Cabana v. Bullock*, 106 S.Ct. at 696; *Lockett v. Ohio*, 438 U.S. 586, 602 (1978) ("That States have authority to make aiders and abettors equally responsible, as a matter of law, with principals, or to enact felony-murder statutes is beyond constitutional challenge. But the definition of crimes generally has not been thought automatically to dictate what should be the proper penalty.")

In recognizing that Raymond and Ricky did not "specifically intend" to kill, the Arizona Supreme Court reached the only conclusion that is or could be supported by this record.<sup>23</sup> That conclusion, under *Enmund*, mandates reversal of their death sentences.

#### B. The Arizona Supreme Court Violated *Enmund* In Defining Intent As Foresight Of A Possibility.

In an effort to avoid the clear application of *Enmund*, the Arizona Supreme Court, on review of petitioners' habeas application, read the intent requirement of *Enmund* to mean

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the participants are accomplices in the offense for which guilt is in question. As the Commentary notes:

[T]he inquiry is not the broad one as to whether the defendant is or is not, in general, an accomplice of another or a co-conspirator; rather, it is the much more pointed question of whether the requisites for accomplice liability are met for the particular crime sought to be charged to the defendant. (Commentary at 306)

Given such a limited inquiry, Section 2.06(e)(a) mandates that the accused have the purpose of promoting or facilitating the commission of the particular crime for which they are being punished. See Commentary at 311. *Enmund*, in its explicit mandate that a "conscious purpose" to cause death be shown, harmonizes perfectly with these provisions of the ALI Model Penal Code.

<sup>23</sup>The Arizona Supreme Court has held that the intent required by the *Enmund* standard must be found beyond a reasonable doubt. *State v. McDaniel*, 136 Ariz. 188, 199; 665 P.2d. 70, 81 (1983), and it purported to find in this case that the "evidence does demonstrate beyond a reasonable doubt [that petitioners] intended to kill." (J.A. 345, J.A. 363) The application of this most stringent of factual standards to the record here makes it clear how permissive a legal standard the court was applying. There is simply no basis in this record for concluding beyond a reasonable doubt that Petitioners intended or contemplated that life would be taken as those concepts were used in *Enmund*.

no more than a broad tort-based understanding of intentional action. Having already held that the boys did not specifically intend to kill, did not plan or plot the homicides, and did not themselves kill, a divided Arizona Supreme Court held that they might nonetheless be executed under *Enmund*. The "intent to kill" required by *Enmund*, the Arizona Court decreed, means no more than that the defendant be in a situation in which he can be found to anticipate "that lethal force would or might be used or that life would or might be taken in accomplishing the underlying felony." (J.A. 345, J.A. 363) In so broadly construing intent to kill, the Arizona Supreme Court plainly violated this Court's holding and reasoning in *Enmund* itself.<sup>24</sup>

Arizona's interpretation totally eviscerates the *Enmund* standard. It constructs a test of "intent" which would allow the execution of virtually every individual ever convicted of any vicarious felony murder—including Earl Enmund himself. For the reality is that any felony involving a dangerous weapon presents some risk that lethal force might be used and that human life might then be taken. If that were not so, the underlying felony would not have been made a predicate for the felony-murder rule. And it was the purpose of *Enmund* precisely to distinguish—as a matter of constitutional law—between those actors in a felony-murder-accessorial-liability case who may be executed and those who may not.

In *Enmund*, this Court concluded:

*Enmund* did not kill or intend to kill and thus his culpability is plainly different from that of the robbers who killed; yet the State treated them alike and attributed to Enmund the culpability of those who killed the Kerseys. This was impermissible under the Eighth Amendment.

458 U.S. at 798.

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<sup>24</sup>*Cabana v. Bullock*, 106 S.Ct. 689 (1986), makes clear that the Arizona Supreme Court is authorized to make the factual determination of intent required by *Enmund*. But it does not permit the state court to define the "intent" required by *Enmund* according to state common law principles. The "intent" required by *Enmund* is an issue of federal constitutional law, mandated by the eighth amendment, and the error here came not in who made the findings of fact, but in how they defined the constitutional standard.

In this case, the State treated petitioners who did not kill and Greenawalt who did kill "alike and attributed to [petitioners] the culpability of those who killed [the Lyons]." Indeed, in its dispositive findings on the three aggravating factors it found against petitioners, the sentencing judge employed *the same language* in relation to the killer Greenawalt and the non-killer petitioners. See, *supra*, n.15. It is difficult to imagine a more blatant violation of the requirement that the "focus must be on his culpability, not on that of those who committed the robbery and shot the victims, for we insist on individualized consideration as a constitutional requirement in imposing the death sentence." *Enmund v. Florida*, 458 U.S. at 798 (quoting *Lockett v. Ohio*, 438 U.S. 586 (1978)).

The risk that lethal force might be used or that life might be taken was no less present in the case of Earl Enmund, who the trial court found had planned and participated in an armed robbery, than in the case of Ricky and Raymond Tison. This risk is present in virtually every armed robbery, every burglary, every kidnapping, and many other predicate felonies.

In adopting a definition of intent which requires no more than foresight of a possibility, the Arizona Supreme Court moved far beyond what qualifies as "specific intent" in criminal law.<sup>25</sup> It went beyond the knowledge of substantial certainty

<sup>25</sup>The ALI Model Penal Code Section 2.02(2) sets forth four levels of intent:

(2) Kinds of culpability defined.

(a) *Purposely*. A person acts purposely with respect to a material element of an offense when:

- (i) if the element involves the nature of his conduct or a result thereof, it is his conscious object to engage in conduct of that nature or to cause such a result; and
- (ii) if the element involves the attendant circumstances, he knows of the existence of such circumstances.

(b) *Knowingly*. A person acts knowingly with respect to a material element of an offense when:

- (i) if the element involves the nature of his conduct or the attendant circumstances, he is aware that his conduct is of that nature or that such circumstances exist; and
- (ii) if the element involves a result of his conduct, he is aware that it is practically certain that his conduct will cause such a result.

(c) *Recklessly*. A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his

required to constitute knowing criminal action, beyond even the gross and substantial likelihood of death generally required for criminal recklessness. In effect, the Arizona Supreme Court held that the *Enmund* standard—the substantive constitutional standard governing imposition of death as punishment—is no stricter than the standards for reckless homicide punishable in most states by no more than ten years imprisonment.<sup>26</sup>

conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

(d) *Negligently*. A person acts negligently with respect to a material element of an offense when he should be aware of a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that the actor's failure to perceive it, considering the nature and purpose of his conduct and the circumstances known to him, involves a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.

The Arizona Supreme Court erroneously reads *Enmund* to mandate that the state merely needs to show recklessness or negligence. But this low level intent standard, recklessness cloaked within the language of foreseeability, is precisely the type of standard this Court rejected in *Enmund*. This Court, in assessing Earl Enmund's culpability, differentiated the culpability of those who kill, and those who engage in dangerous conduct but do not specifically intend that death result. (*Enmund v. Florida*, 458 U.S. at 798.) By adopting a tort foreseeability test, the Arizona Supreme Court did not merely abjure that "intensely individual appraisal of the 'personal responsibility and moral guilt' of the defendant" (*Bullock*, 106 S.Ct. at 702) which *Enmund* requires, it conflated the very different culpabilities of the killers Gary Tison and Randy Greenawalt on the one hand, and the non-killer youngsters on the other hand.

As early as this Court's opinion in *Lockett*, Justice White specifically disapproved of such a lax standard for eighth amendment purposes. "The value of capital punishment as a deterrent," Justice White noted, "to those lacking a purpose to kill is extremely attenuated." 438 U.S. at 625. Thus, Justice White arrived at the "unavoidable" conclusion "that the infliction of death upon those who had no intent to bring about the death of the victim is not only grossly out of proportion to the severity of the crime but also fails to contribute significantly to acceptable, or, indeed, any perceptible goals of punishment." 438 U.S. at 626. Justice White concluded by condemning Ohio's death penalty statute for requiring "at most the degree of *mens rea* defined by the ALI Model Penal Code as recklessness. . . ." 438 at 627. Arizona's sentencing of Ricky and Raymond Tison to death must be condemned for precisely the same reason.

<sup>26</sup>Again, this Court may look to the ALI Model Penal Code Commentary for further indications of the degree of error in the Arizona Supreme Court's



The Constitution may not bar Arizona from choosing to classify as felony murder what most states would consider reckless homicide.<sup>27</sup> But it does prohibit the imposition of death for such risk-taking activity. As this Court recognized most recently in *Cabana v. Bullock*, "the principles of propor-

reasoning. The Commentary condemns the use of mere probabilities as a sole indicator of culpability. To do so, the Commentary notes, would amount to punishing an accomplice for negligence while maintaining a higher standard for the principal who actually perpetrated the crime. In the words of the commentators:

The culpability required to be shown of the principal actor, of course, is normally higher than negligence. . . . To say that the accomplice is liable if the offense committed is "reasonably foreseeable" or the "probable consequence" of another crime is to make him liable for negligence, even though more is required in order to convict the principal actor. This is both incongruous and unjust; if anything, the culpability level for the accomplice should be higher than that of the principal actor. . . . (Commentary, p. 312, n.42, emphasis added.)

See *Nye & Nisson v. United States*, 336 U.S. 613, 619 (1949); see e.g., Ala. Code §§ 13A-6-3, 13A-5-6 (1975 & Supp. 1981); Ark. Stat. Ann. ¶¶ 41-1504, 41-901 (1947 & Supp. 1985); Conn. Gen. Stat. Ann. §§ 53a-56a, 53a-35a (West 1958); Hawaii Rev. Stat. §§ 707-702, 706-660 (1976 & Supp. 1984); Ill. Ann. Stat. Ch. 38 §§ 9-3 (1979), 1005-8-1 (1982 & Supp. 1985); Ind. Code Ann. §§ 35-42-1-5, 35-50-2-6 (Burns 1978); Kan. Stat. Ann. §§ 21-3404, 21-4501 (1981 & Supp. 1985); Ky. Rev. Stat. §§ 507.040, 532.060 (1985); Mo. Ann. Stat. §§ 565.024, 558-011 (Vernon 1979 & Supp. 1986); N.J. Stat. Ann. §§ 2c: 11-4, 2c: 43-6 (West 1982); N.D. Cent. Code §§ 12.1-16-02, 12.1-32-01 (1985); Or. Rev. Stat. §§ 163.125, 161.605 (1983); Pa. Stat. Ann. tit. 18, §§ 2504, 1104 (Purdon 1983); S.D. Codified Laws Ann. 22-16-20, 22-6-1 (1979 & Supp. 1984); Tex. Penal Code Ann. §§ 19.05, 12.34 (Vernon 1974); Wash. Rev. Code Ann. §§ 9A.32.060, 9A.20.021 (1977 & Supp. 1986); Wis. Stat. Ann. §§ 940.06, 939.50 (West 1982).

<sup>27</sup>A number of states have abolished the felony murder rule. Kentucky and Hawaii abolished the rule by statute. Hawaii Rev. Stat. §§ 707-701 (1976 & 1984 Supp.); Ky. Rev. Stat. § 507.020 (1985). Ohio has effectively reclassified felony murder as involuntary manslaughter. Ohio Rev. Code Annot. §§ 2903.01, 2903.04 (1982 & 1985 Supp.) Michigan has eliminated the rule by judicial decision. *People v. Aaron*, 409 Mich. 672, 299 N.W.2d 304 (1980). Additionally, New Hampshire has adopted a rebuttable presumption of recklessness and indifference under the rule, thereby constricting its reach. N.H. Rev. Stat. Ann. § 630: 1-B (1976 & 1983 Supp.). See, Roth and Sundby, *The Felony-Murder Rule: A Doctrine at Constitutional Crossroads*, 70 Cornell L. Rev. 446, 446-7 (1985). This Court in *Enmund* noted that only eight jurisdictions imposed the death penalty, at that time, solely for participating in a robbery in which another robber kills. 458 U.S. at 789. Of the eight jurisdictions so noted, four of them, after *Enmund*, no longer impose the death penalty in those circumstances. See Miss. Ann. Code § 99-19-101(7) (Supp. 1985), Nev. Rev. Stat. 200.033(4) (1983), and the California and South Carolina cases cited in n.30, *infra*.

tionality embodied in the Eighth Amendment bar imposition of the death penalty upon a class of persons who may nonetheless be guilty of the crime of capital murder as defined by state law; that is, the class of murderers who did not themselves kill, attempt to kill, or intend to kill. 106 S.Ct. at 696.

To define intent to kill so broadly as to encompass any risk-taking activity which might endanger life, as the Arizona Supreme Court did, amounts to nothing less than violating the constitutional limits imposed by *Enmund*. Yet it was only through such an evisceration of the *Enmund* test that a bare majority of the Arizona Supreme Court could deem the petitioners to have "intended" the deaths here and thus be eligible for the death penalty in this case. For if intent to kill were properly limited to its constitutionally mandated meaning, there simply would be no basis in this record for the execution of Raymond and Ricky Tison. The evidence is overwhelming that they lacked any such intent; indeed, it seems clear that their intent was that no one should die, and that their father either affirmatively misled them to believe that he shared that intent, or that he suddenly changed his mind after sending his sons for the water jug.

The record is clear that Ricky and Raymond Tison had every reason to believe that their father, a model prisoner since the boys were small children, would not turn ruthless killer.<sup>28</sup> First, during the breakout—a time most likely for violence to occur—the boys found their father holding to his word that killing would be avoided. No one was hurt and not a shot was fired. Guards and visitors were merely placed in a storage room, and Gary Tison, Randy Greenawalt, and Donnie, Ricky and Raymond Tison walked into the parking lot, got into a car, and drove off. Second, after the Mazda was flagged down and the victims abducted, Gary Tison shot the radiator of the Lincoln, disabling it in the middle of the desert. The victims were placed in the Lincoln, as if to be left to their own devices. If the victims were to be shot, the operability of the Lincoln would be irrelevant. Third, and directly buttressing this

<sup>28</sup>"[T]here was a family obsession, the boys were 'trained' to think of their father as an innocent person. . . ." See, *supra*, n.16.

inference, Gary Tison sent Ricky and Raymond "to go get some water, get a jug of water for these people." In light of these facts, the execution of Ricky and Raymond can only be viewed as the very sort of attribution of the father's guilt to the sons that *Enmund* squarely prohibits.

Arizona's requirement as to the type and level of intent necessary to satisfy *Enmund* is also at variance with the majority of courts which have applied *Enmund*. Petitioners are aware of no federal case allowing a death sentence to stand solely on the basis that a defendant anticipated that lethal force might be used or that lives might be taken.<sup>29</sup> Similarly, substantial authority exists in post-*Enmund* cases decided by state courts that more than a possibility that lethal force might be employed is necessary to justify execution.<sup>30</sup>

<sup>29</sup>See *Hyman v. Aiken*, 777 F.2d 938, 940 (4th Cir. 1985) (death sentence vacated because "[t]he instruction allowed the jury to recommend a death sentence for Hyman as an aider and abettor whether or not he killed, attempted to kill, or intended to kill the robbery victim"); *Chaney v. Brown*, 730 F.2d 1334, 1356 n.29 (10th Cir.), cert. denied, 105 S.Ct. 601 (1984) ("Before death penalty can be imposed it must be proven beyond a reasonable doubt that [the defendant] killed or attempted to kill the victim, or himself intended or contemplated that the victim's life would be taken"); *Fleming v. Kemp*, 748 F.2d 1435, 1452-56 (11th Cir. 1984) (jury had to have found defendant guilty of malice murder to support death sentence under *Enmund*), reh. denied, 765 F.2d 1123 (11th Cir. 1985), cert. denied, 106 S.Ct. 1286 (1986); *Reddix v. Thigpen*, 728 F.2d 705, 708 (5th Cir.), reh. denied, 732 F.2d 494 (5th Cir.), cert. denied, 105 S.Ct. 397 (1984) ("The eighth amendment, then, allows the state to impose the death penalty only if it first proves that the defendant either participated directly in the killing or personally had an intent to commit murder").

<sup>30</sup>*People v. Garewal*, 173 Cal. App. 3d 285, 218 Cal. Rptr. 690, 696 (1985) (death penalty may be imposed "only if the aider and abettor shared the perpetrator's intent to kill"); *State v. Peterson*, 335 S.E.2d 800, 802 (S.C. 1985) ("death penalty can not be imposed on an individual who aids and abets in a crime in the course of which a murder is committed by others, but who did not himself kill, attempt to kill, or intend that killing take place or that lethal force be used"); *People v. Garcia*, 36 Cal.3d 539, 557, 205 Cal. Rptr. 265, 275, 684 P.2d 826, 836 (1984), cert. denied, 105 S.Ct. 1229 (1985) ("possible inference of intent to aid a killing" not enough to satisfy *Enmund* and the eighth amendment); *Carlos v. The Superior Court of Los Angeles County*, 35 Cal.3d 131, 151, 197 Cal. Rptr. 79, 92, 672 P.2d 862, 875 (1983) (defendant's "knowledge that his codefendants were armed and prepared to kill," his contemplation "that [codefendant] would shoot and someone might be killed" are similar to facts in *Enmund*; court ruled that death penalty imposed on this record is unconstitutional); *Hatch v. State*, 662 P.2d 1377, 1383 (Okla.

The Arizona Supreme Court's decision to affirm Ricky Tison's and Raymond Tison's death sentences is even beyond the outer fringe of its own body of decisions concerning the applicability of the death statute. Petitioners' cases are the only post-*Enmund* cases adjudicated in Arizona which affirm the imposition of the death penalty solely on the basis that defendants allegedly anticipated or contemplated that lethal force might be used or lives might be taken. In fact, in other cases, the Arizona Supreme Court has overturned convictions or commuted death sentences where it could not find an intent to kill.<sup>31</sup> Only in cases where that court has specifically found that the defendant killed the victim or possessed an intent to kill the victim, has Arizona upheld the imposition of the death penalty in other felony murder convictions.<sup>32</sup>

Crim. App. 1983) (sentencer must examine defendant's individual participation and intent before imposing death penalty), reh. 701 P.2d 1039 (Okla. Crim. App. 1985), cert. denied, 106 S.Ct. 934 (1986); *People v. Dillon*, 34 Cal.3d 441, 194 Cal. Rptr. 390, 420, 668 P.2d 697, 727 (1983) (felony-murder conviction reduced to second degree murder because defendant's individual culpability did not rise to level of intent to kill); *People v. Jones*, 94 Ill.2d 275, 447 N.E.2d 161 (1982), cert. denied, 464 U.S. 920 (1983) (where defendant's participation is only in the underlying felony and where defendant does not intend that the victim be killed and does not actually participate in killing, death penalty may not be imposed); *People v. Tiller*, 94 Ill.2d 303, 447 N.E.2d 174 (1982), cert. denied, 461 U.S. 944 (1983) (same language as *People v. Jones*).

<sup>31</sup>See *State v. Emery*, 141 Ariz. 549, 688 P.2d 175 (1984) (court could not determine whether Emery or accomplice caused victim's death and reduced Emery's death sentence to life imprisonment because the court could not find that Emery killed the victim, attempted to kill the victim or intended that his accomplice kill the victim); *State v. McDaniel*, 136 Ariz. 188, 665 P.2d 70 (1983) (court found no intent to kill and commuted McDaniel's sentence to life where McDaniel assisted in the assault and robbery of the victim, helped tie up victim and left victim in car trunk where he died of heat exhaustion; however, because the car was left in the victim's apartment complex with the keys in the ignition and the windows open, court surmised that McDaniel wanted someone to rescue victim and, therefore, did not contemplate the death of the victim).

<sup>32</sup>See *State v. Bishop*, 144 Ariz. 521, 698 P.2d 1240 (1985) (Bishop found to have killed victim where evidence demonstrated that Bishop planned to kill the victim, struck the victim four times with a hammer, stole victim's wallet, tied up victim and threw him in mine shaft and covered up the victim); *State v. Bracey*, 145 Ariz. 520, 703 P.2d 464 (1985), cert. denied, 106 S.Ct. 898 (1986) (court found that Bracey, a contract killer, actually killed two victims and a third intended victim lived and identified Bracey as murderer); *State v.*



Moreover, the application of the death penalty in this case would serve no useful purpose. This Court noted in *Furman v. Georgia*, 408 U.S. 238 (1972) that no purpose is served "where the [death] penalty is so seldom invoked that it ceases to be the credible threat essential to influence the conduct of others." 408 U.S. at 312. That the Tisons' case presents a rare instance of a death penalty being imposed on individuals without intent to kill is clear. As Justice White noted, in some cases "it may be

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*Hooper*, 145 Ariz. 538, 703 P.2d 482 (1985), *cert. denied*, 106 S.Ct. 834 (1986) (same facts as *Bracey*, court found that Hooper either killed the victims or attempted to kill the victims before Bracey achieved that result); *State v. Martinez-Villareal*, 145 Ariz. 441, 702 P.2d 670, *cert. denied*, 106 S.Ct. 339 (1985) (trial court made finding that the defendant actively and deliberately took part in murder and intended both victims to die based on Martinez-Villareal's bragging to friends that he had killed two people); *State v. Poland*, 144 Ariz. 388, 698 P.2d 183, *cert. granted*, 106 S.Ct. 60 (1985) (Arizona Supreme Court found that the defendant killed, attempted or intended to kill victims where evidence demonstrated that Poland robbed an armored car and disposed of the guards' bodies in Lake Mead); *State v. Fisher*, 141 Ariz. 227, 686 P.2d 750, *cert. denied*, 105 S.Ct. 548 (1984) (*Enmund* satisfied where special verdict found that Fisher actually committed the murder); *State v. Harding*, 141 Ariz. 492, 687 P.2d 1247 (1984) (trial court made specific finding that Harding killed victim); *State v. James*, 141 Ariz. 141, 685 P.2d 1293, *cert. denied*, 105 S.Ct. 398 (1984) (companion case to *State v. Libberton*, *infra*; James found to have actually caused the victim's death); *State v. Libberton*, 141 Ariz. 132, 685 P.2d 1284 (1984) (court found that Libberton held gun on victim, threatened victim, struck victim with rock and board, fired gun at victim's head, slammed rocks on victim's head and then threw body into mine shaft, thereby satisfying *Enmund* intent to kill requirement); *State v. Villafuente*, 142 Ariz. 323, 690 P.2d 42 (1984), *cert. denied*, 105 S.Ct. 1234 (1985) (court concluded that the defendant killed and intended to kill his victim where he struck the victim several times in a fight and left her bound and gagged and she subsequently died as a result of gagging); *State v. Gillies*, 135 Ariz. 500, 662 P.2d 1007 (1983), *cert. denied* 105 S.Ct. 1775 (1984) (Gillies confessed to friends that he kidnapped, raped, robbed and handed rock to accomplice who used it to kill victim and then helped bury victim thus satisfying *Enmund* intent test); *State v. Jordan*, 137 Ariz. 504, 672 P.2d 169 (1983) (*Enmund* satisfied because Arizona Supreme Court found that Jordan killed and intended to kill victim); *State v. Smith*, 138 Ariz. 79, 673 P.2d 17 (1983), *cert. denied*, 465 U.S. 1074 (1984) (court concluded that Smith planned the killing and strangled the victim while another participant stabbed her; court found that Smith intended to kill and participated in the killing); *State v. Richmond*, 136 Ariz. 312, 666 P.2d 57, *cert. denied*, 464 U.S. 986 (1983) (court found that Richmond intended to kill where he admitted planning the robbery, driving the victim into the desert and knocking victim unconscious and where court found that Richmond repeatedly drove a car over victim).

conceivable that a few of the 'triggermen' actually executed lacked an intent to kill. But such cases will of necessity be rare." *Enmund v. Florida*, 458 U.S. at 791-92.

One can only surmise how infrequent death will be imposed on a "non-triggerman" who not only lacks specific intent, but who was affirmatively fooled by the actual killers. This Court further noted in *Enmund* that deterrence could only be a credible goal when murder is deliberate: "We are quite unconvinced, however, that the threat that the death penalty will be imposed for murder will measurably deter one who does not kill and has no intention or purpose that life will be taken. Instead, it seems likely that 'capital punishment can serve as a deterrent only when murder is the result of premeditation and deliberation,' *Fisher v. U.S.*, 328 U.S. 463, 484 (1946) (Frankfurter, J., dissenting), for if a person does not intend that life be taken or contemplate that lethal force will be employed by others, the possibility that the death penalty will be imposed for vicarious felony murder will not 'enter into cold calculus that precedes the decision to act.' *Gregg v. Georgia*, *supra*, at 186." *Enmund v. Florida*, 458 U.S. at 798-99.

Finally, as in *Enmund*, one would be hard-pressed to find society's need for retribution sufficient to justify the imposition of the death penalty here. Having been affirmatively misled by their father into believing that no lethal force would be used, the boys could not possess the requisite moral culpability to warrant the most extreme sanction, for intention in criminal law is the critical factor in assessing "the degree of criminal culpability." *Mullaney v. Wilbur*, 421 U.S. 684, 698 (1975); *Cf.*, *Robinson v. California*, 370 U.S. 660 (1962) and *Weems v. U.S.*, 217 U.S. 349 (1909) (Criminal penalties as unconstitutionally excessive in the absence of intentional wrongdoing).

Nor is this the kind of case which—according to the majority in *Enmund*—"would be very different," because "the likelihood of a killing in the course of a robbery was so substantial that one should share the blame for the killing if he somehow participated in the felony." 458 U.S. at 799. The *Enmund* majority, in very next sentence, distinguished the kind of crimes "for which killing is not an essential ingredient. . . ."

*Id.* In this case both the sentencing court and the Arizona Supreme Court made explicit findings that the murders were "not essential to the defendants' continuing evasion of arrest, . . ." (J.A. 283), and that the sudden decision of Gary Tison and Randy Greenawalt to murder the victims was "senseless" (J.A. 337). These findings—that the murders committed by Gary Tison and Randy Greenawalt were "not essential" to the joint escape and were senseless—coupled with petitioners' contradicted statements that they had an agreement that no one would get hurt, clearly take this case out of that exceptional category where the likelihood of a killing in the course of a felony would be so substantial as to warrant the death penalty for non-killers who did not plan or intend the deaths of the victims.

That the death penalty is excessive here under the eighth amendment is further buttressed by this Court's rationale in *Coker v. Georgia*, 433 U.S. 584 (1977). Defendant, sentenced to death for raping an adult woman, obtained relief from this Court notwithstanding a heinous criminal record, consisting of murder, rape, kidnapping and aggravated assault. After finding a general aversion among most jurisdictions to applying the death penalty to rape cases, the Court stated that these factors "confirm[ed] our own judgment, which is that death is indeed a disproportionate penalty for the crime of raping an adult woman." *Coker v. Georgia*, 433 U.S. at 597. Significantly, this Court's "own judgment" was informed by the comparison between rape and deliberate murder: "It is difficult to accept the notion, and we do not, that the rapist, with or without aggravating circumstances, should be punished more heavily than the *deliberate killer* . . ." *Id.* at 600 (emphasis added). The comparison between rape and *deliberate* murder is entirely consistent with the reasoning of Justice White's concurrence in *Lockett* and this Court's opinion in *Enmund*. That this Court was unwilling to compare aggravated rape to unintended vicarious felony murder reflects the excessiveness of the death penalty to the latter offense.

Under *Cabana v. Bullock*, 106 S.Ct. 689 (1986), no further proceedings are necessary to vacate the death penalties

imposed on Raymond and Ricky Tison. *Cf. Id.* at 700-01 (Burger, C.J., concurring). The application of the *Enmund* standard in this case is clearer even than in *Enmund* itself: the only conclusion, the conclusion reached by the state court in its initial review (and acknowledged by the State in its Response to Petition for Writs of Certiorari), is that these boys lacked the intent to kill that this Court has held is mandated by the Eighth Amendment. In these circumstances, the Constitution prohibits their execution.

## II. THE EXECUTION OF RAYMOND AND RICKY TISON WOULD VIOLATE THE EIGHTH AMENDMENT AND THIS COURT'S DECISION IN *GODFREY v. GEORGIA*

### A. A Comparison Between The Circumstances In *Godfrey* And In The Instant Case Demonstrates That There Is "No Principled Way To Distinguish This Case, In Which The Death Penalty Was Imposed, From The Many Cases In Which It Was Not," And Thus Establishes That The Arizona Court Did Not Apply A Constitutional Construction To Its Death Penalty Statute.

In *Godfrey v. Georgia*, this Court considered the issue of whether, in affirming the imposition of the sentence of death in that case, the Georgia Supreme Court adopted such a broad and vague construction of the relevant aggravating circumstances so as to violate the eighth and fourteenth amendments to the United States Constitution.<sup>33</sup> 446 U.S. 420, 423 (1980). In a 6 to 3 decision, this Court reversed the death penalty in that case. The plurality decision—written by Justice Stewart and joined by Justices Blackmun, Powell and Stevens<sup>34</sup>—con-

<sup>33</sup>In the words of this Court:

In the case before us, the Georgia Supreme Court has affirmed a sentence of death based upon no more than a finding that the offense was "outrageously or wantonly vile, horrible and inhuman." There is nothing in these few words, standing alone, that implies any inherent restraint on the arbitrary and capricious infliction of the death sentence. A person of ordinary sensibility could fairly characterize almost every murder as "outrageously or wantonly vile, horrible and inhuman."

446 U.S. at 428-29.

<sup>34</sup>Justices Brennan and Marshall joined the judgment reversing the death penalty in a separate opinion written by Justice Marshall. *Id.* at 433.



cluded that Godfrey's "crimes cannot be said to have reflected a consciousness materially more 'depraved' than that of any person guilty of murder." *Id.* at 433. There was thus "no principled way to distinguish this case, in which the death penalty was imposed, from the many cases in which it was not," *Id.* Since a capital sentencing scheme must provide a "meaningful basis for distinguishing the few cases in which [the penalty] is imposed from the many in which it is not," the Georgia Court's decision to uphold the imposition of the death penalty for Godfrey's crimes was unconstitutional.<sup>35</sup> *Id.* at 427, (quoting *Gregg v. Georgia*, 428 U.S. 153 (1976) and *Furman v. Georgia*, 408 U.S. 238, *reh. denied*, 409 U.S. 902 (1972)). This Court thus answered "no" to the question posed for decision: "Whether, in light of the facts and circumstances of the murders [Godfrey] was convicted of committing, the Georgia Supreme Court can be said to have applied a constitutional construction" to its death penalty statute.

A comparison between the circumstances of the instant case and those of *Godfrey* demonstrate that the imposition of the death penalty on the Tison brothers is even more inconsistent with constitutional standards than it was in the *Godfrey* case, and thus establishes that the Arizona court cannot be said to have applied a constitutional construction to its death penalty statute.

In *Godfrey*, the defendant himself, after "thinking about it for eight years," decided to murder his wife. *Id.* at 426. Previously, he had been charged by her with aggravated assault "based on an incident in which he had cut some clothes off her body with a knife." *Id.* at 444. On the day of the killings, Godfrey "got out his shotgun and walked with it down the hill from his home to the trailer where his mother-in-law lived." *Id.* at 425. There is no doubt that during this walk he was premeditating the murders he was about to commit. When he arrived at the trailer, he looked through the window and

<sup>35</sup>In *Godfrey*, this Court held specifically that the Georgia Supreme Court cannot be said "to have applied a constitutional construction of the phrase outrageously or wantonly vile, horrible or inhuman in that [they] involved . . . depravity of mind. . . ." *Id.* at 433.

"observed his wife, his mother-in-law and his eleven year old daughter playing a card game." *Id.* With full realization that his eleven year old daughter would observe the ensuing horror, he pointed the shotgun at his wife's head and fired, "in coldblooded executioner's style." *Id.* at 449 (White, J., dissenting). His eleven year old daughter, watching in terror, began to run past Godfrey, seeking help for her mortally wounded mother. Godfrey struck her on the head with the barrel of the gun. Though such a blow might easily have been lethal, in this case it merely injured the girl. Godfrey then took the time to reload his shotgun, enter the trailer, aim at his terrified mother-in-law, and shoot her as well. As the dissenting opinion in *Godfrey* observed: the mother-in-law's "last several minutes as a sentient being must have been as terrifying as the human mind can imagine." *Id.* 449 (White, J., dissenting).<sup>36</sup>

At the time of these multiple premeditated murders and aggravated assault, Godfrey was a mature adult. He acknowledged that his crime was "hideous," that he had been thinking about it for eight years, and that "I'd do it again." *Id.* at 427. There is no question that he specifically intended to kill his two victims, that he premeditated their murder, and that their death was purposeful.

In the Tisons' case, on the other hand, the petitioners—who were 18 and 19 years old at the time they agreed to help their father escape from prison—did not themselves kill anybody. They "had an agreement with [their] dad that nobody would get hurt because we wanted no one hurt." (J.A. 287) During the breakout itself, while they were in control of the guns, not a

<sup>36</sup>The dissent went as follows:

And who among us can honestly say that Mrs. Wilkerson did not feel "torture" in her last sentient moments. Her daughter, an instant ago a living being sitting across the table from Mrs. Wilkerson, lay prone on the floor, a bloodied and mutilated corpse. The seconds ticked by; enough time for her son-in-law to reload his gun, to enter the home, and to take a gratuitous swipe at his daughter. What terror must have run through her veins as she first witnessed her daughter's hideous demise and then came to terms with the imminence of her own. Was this not torture? And if this was not torture, can it honestly be said that petitioner did not exhibit a "depravity of mind" in carrying out this cruel drama to its mischievous and murderous conclusion?

*Id.* at 450-51 (White, J., dissenting).

single shot was fired. Before their father and Greenawalt suddenly decided to kill the victims, Gary Tison first disabled the car and then sent his sons to get water for the victims, thus affirmatively leading them to continue to believe that the victims would be left alive with a jug of water. The father then either suddenly changed his mind and killed the victims, or his prior actions were intended to trick his sons into believing that the victims would be left alive.<sup>37</sup>

In sum, the Tison brothers were young men with no prior felony records, heavily under the influence of their parents,<sup>38</sup>

<sup>37</sup>Both the sentencing judge and the Arizona Supreme Court made findings which support the petitioners' contention that they had absolutely no reason to believe that their father and Randy Greenawalt would kill the victims, since killing them "was not essential to the defendants' continuing evasion of arrest." (J.A. 283) The sentencing court found:

It was not essential to the defendants' continuing evasion of arrest that these persons were murdered. The victims could easily have been restrained sufficiently to permit the defendants to travel a long distance before the robberies, the kidnappings and the theft were reported. And in any event the killing of Christopher Lyons, who could pose no conceivable threat to the defendants, by itself compels the conclusion that it was committed in a depraved manner.

(J.A. 283)

The Arizona Supreme Court found:

The senselessness of the murders, given the inability of the victims to thwart the escape, especially in such an isolated area, and the fact that a young child, less than two years old, who posed no threat to the captors, was indiscriminately shot while in the arms of his mother, compels the conclusion that the actual slayers possessed a shockingly evil state of mind. Less violent alternatives which would have served their purposes in preventing their detection by the authorities were obviously available. But they chose to slaughter an entire family and Theresa Tyson.

(J.A. 337, emphasis added.)

Had the killing of the victims been essential to the escape, there would, perhaps, be a stronger basis for concluding that the sons should have realized that they were going to be killed. See *Enmund v. Florida*, 458 U.S. at 798. But the very "senselessness" of the murders made them far less predictable, especially to the children of a man they believed had been rehabilitated. The record shows that the sons did not know, at the time, that Randy Greenawalt—whose idea it apparently was to kill the victims—was a convicted murderer. (J.A. 249, J.A. 243)

<sup>38</sup>See, *supra*, n. 16. According to Dr. MacDonald's psychological evaluation of Ricky Tison, "there had been continuing and subtle pressure upon this youngster, applied by his father in a most manipulative but subtle and consistent manner, quite possibly beyond Ricky's awareness. . . . He indicated that at this time his father, Gary Tison, was the leader of the group and that he was a very dominant personality." Additionally, Dan Deck, a jour-

who—perhaps naively, as it turned out—believed that they could help their father, a model prisoner whose last crime had been committed 11 years earlier, escape from prison without anybody getting hurt. They never fired a shot, never specifically intended to kill anyone, and affirmatively believed that the victims would be left alive in an incapacitated car with a jug of water. It was not their purpose to kill, and they did not, in fact, kill. As the psychologist, appointed by the court to evaluate them for sentencing, so aptly put it:

I do believe that their father, Gary Tison, exerted a strong, consistent, destructive but subtle pressure upon these youngsters and I believe that these young men got committed to an act which was essentially "over their heads." Once committed, it was too late . . .

MacDonald Evaluation, *supra*, at n. 16.

It is not surprising, therefore, that the pre-sentence reports for both Tison brothers refused to recommend the death penalty. The Chief Adult Probation Officer concluded that the defendant "did not actively participate in the murder of the Lyons Family and Theresa Tyson, except he drove them to the scene." (J.A. 252) After a complete review, the Probation Officer was "torn between recommending the maximum or lighter sentence." Thus, in both cases "no recommendation" was made. (J.A. 252, 269)<sup>39</sup> The court-appointed psychologist concluded that "these youngsters have a capacity for rehabilitation" and recommended that they be "placed in a structured and controlled setting." MacDonald Evaluation, *supra*, at n. 16.

nalist who taught classes at the Arizona State Prison and who came to know Gary Tison well through the prison newspaper, testified at the sentencing hearing that "[Gary Tison] was one of the most persuasive people I have ever met." Tr. March 14, 1979 at 130.

<sup>39</sup>In contrast, the presentence report for Randy Greenawalt did recommend the death penalty. Despite the significant differences between the presentence reports for the Tison brothers and the presentence report for Greenawalt, the sentencing judge's findings relating to aggravating circumstances were essentially the same insofar as they related to the killings themselves. Indeed he used the same language. Because his sentence predated *Enmund*, he drew no distinction between the actual killers and those who neither killed nor specifically intended the deaths. Greenawalt's conviction has recently been reversed and remanded by the 9th Circuit in *Greenawalt v. Ricketts*, No. 84-2752 (March 20, 1986).



By any relevant basis of comparison, the Tison brothers are far less deserving of the death penalty than was Godfrey. Their crimes lie much further from "the core" and nearer "the periphery" of those murder cases for which the most serious of penalties is imposed. *Godfrey v. Georgia*, 446 U.S. at 429-30.

Even if one looks at the killings themselves, without regard to the role of the petitioners—a view now forbidden by *Enmund*—there is "no principled way to distinguish this case [the Tison brothers], in which the death penalty was imposed, from the many cases"—including *Godfrey*—in which it was not.

In the Tison case, a family of four was shot simultaneously (though one apparently remained alive for some time). In *Godfrey*, first the mother was shot; after that, the daughter—who witnessed her mother's shooting—was assaulted; and then the mother-in-law—who had witnessed both the killing of her daughter and the assault on her granddaughter—was shot. In both cases, shotguns were used. In both cases the killings were senseless and horrible.

The crucial constitutional distinction between the Tison and *Godfrey* cases lies in the individual "consciousness" or state of mind of the defendants. A plurality of this Court concluded that Godfrey's "crimes cannot be said to have reflected a consciousness materially more 'depraved' than that of any person guilty of murder." *Id.* at 433. The record in Tison plainly establishes that their actions, intentions and beliefs reflect "a consciousness" materially less depraved and culpable than that of most other persons guilty of murder, including Godfrey.

The Tison brothers neither committed the *actus reus* of murder, nor did they possess the *mens rea* for murder. They neither killed, nor did they specifically intend to kill, nor did they plan any killing. Even the State of Arizona formally concedes this in its papers before this Court.<sup>40</sup>

<sup>40</sup>At no time has [the Arizona Supreme Court] held that either petitioner actually killed any of the four victims or that either petitioner planned any of the killings. . . . The original conclusion that petitioners harbored no specific intent to kill remains unchanged." State's Response at 11.

In order to convict the Tisons of the crime of murder, the State of Arizona was required to superimpose one legal construct upon another. The murderous *acts* of Gary Tison and Randy Greenawalt were deemed *attributable* to petitioners by means of accessorial liability rules; and the murderous *intent*, which petitioners did not possess, was *attributed* to them by means of the felony murder rule.<sup>41</sup> These legal attributions may be sufficient to produce a conviction for the crime of murder, but they do not place the Tison brothers' crimes at, or even near, the "core" of the most serious of crimes—the premeditated and purposeful taking of life. Petitioners' actions are at, or beyond, the periphery of such crimes.

The Arizona Supreme Court sought to bring petitioners' crimes closer to the "core" of capital murder by creating yet another legal construct. It defined intent to kill to include "the situation in which the defendant intended, contemplated, or anticipated that lethal force would or might be used or that life would or might be taken in accomplishing the underlying felony." (J.A. 345, J.A. 363) Thus, under the Arizona Court's definition of "intent to kill," a defendant could be constructively deemed to possess such an "intent" even if he both firmly believed that lethal force would not be used and categorically rejected the use of such force, but realized that there was some likelihood—no matter how slight—that someone "might" be killed.<sup>42</sup>

Under the Arizona definition of intent to kill, as applied to the Tison brothers, not only is there no principled way to

<sup>41</sup>See J.A. 177-80, J.A. 216-20.

<sup>42</sup>This is certainly a different standard of intent than the one contemplated by the majority opinion in *Enmund* when it observed that, "It would be very different if the likelihood of a killing in the course of a robbery were so substantial that one should share the blame for the killing if he somehow participated in the felony." 458 U.S. at 799 (emphasis added). In this case, the petitioners did not believe there was any likelihood of killings, because their father—who they idolized—had promised them that no one would be hurt. They believed that their father was rehabilitated and they "got committed to an act which was essentially 'over their heads.'" Moreover, the killings of the Lyons family by Gary Tison and Randy Greenawalt was found by the sentencing court to have been "not essential" to the joint escape, and thus not a predictable part of the joint crime. (J.A. 283)

distinguish their case from the many *first degree* murders where the death penalty is not imposed, but there would be no principled way of distinguishing it from "many cases" of manslaughter, criminally negligent homicide or other similar crimes in which life is taken as a result of recklessness, indifference or other failure to appreciate that lethal force "might be used" or the life "might be taken."<sup>43</sup> The punishment for such crimes of nonspecific intent (or "foreseeability" as the dissenting Justices in Arizona characterized it) is *never* death in this country, and generally carries a relatively short term of years with no mandatory minimum prison sentence.<sup>44</sup> If Georgia's construction of its statute to permit the execution of a murderer who actually killed after planning and premeditating his purposeful taking of life is unconstitutional, because his crime "cannot be said to have reflected a consciousness materially more 'depraved' than that of any person guilty of murder," then it surely follows that Arizona's construction of its statute to permit the execution of two young brothers who neither killed, planned to kill, or specifically intended to kill is also unconstitutional. A fair application of the rule in *Godfrey v. Georgia* to the facts of this case requires that here, as there, petitioners' death sentences must be reversed.<sup>45</sup>

**B. The Aggravating Factors Relied On By The Arizona Courts Were At Least As Standardless, Unchanneled And Uncontrolled As The Ones Relied On In *Godfrey*.**

In *Godfrey*, the jury found beyond a reasonable doubt that the crime was "outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim." Ga. Code § 27-2534.1(b)(7) (1978).<sup>46</sup> 446 U.S. at 422. The sentencing judge and the Georgia Supreme Court affirmed this finding of aggravation, after independently assessing the evidence. *Id.* at 423. In reviewing that affirmance, this Court said that "the validity of the petitioner's

<sup>43</sup>See, *supra*, at 22, 22 n.25, 23 and 23 n.26.

<sup>44</sup>See, *supra*, n.8.

<sup>45</sup>This Court did not remand the death penalty phase of the *Godfrey* judgment back to the Georgia courts (as it did in *Cabana v. Bullock*, 106 S.Ct. 689). It reversed the death penalty and remanded the remainder of the case.

death sentences turns on whether, in light of the facts and circumstances of the murders that he was convicted of committing, the Georgia Supreme Court can be said to have applied a constitutional construction of the phrase 'outrageously or wantonly vile, horrible or inhuman in that [they] involved . . . depravity of mind'. . . ." *Id.* at 432. And this Court concluded "that the answer must be no." *Id.*

A similar analysis of whether "in light of the facts and circumstances" of the instant case, the Arizona Supreme Court can be said to have applied a constitutional construction of its own aggravating factors, must lead to the same conclusion: "that the answer must be no."

In its original 1981 decision (J.A. 309-343), the Arizona Supreme Court affirmed two of the aggravating factors relied on by the sentencing judge.<sup>46</sup> The first was that "[t]he defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value." (J.A. 334) This factor—pecuniary motive—is present in virtually every felony murder case and fails to "distinguish this case, in which the death penalty was imposed, from the many cases in which it was not." *Godfrey v. Georgia*, 446 U.S. at 433. Nearly every armed robbery, burglary and kidnapping involves a pecuniary motive. *Enmund* surely did.<sup>47</sup> Indeed, in the instant case, the motive was far less pecuniary than in most felony murders where no death sentence is imposed. Here the petitioners' underlying motive was clearly not pecuniary, but was rather a misguided attempt to reunite their family; the taking of the car was not really "pecuniary" and was only incidental to the escape and not even part of the original plan.<sup>48</sup>

<sup>46</sup>The Arizona Supreme Court expressly limited its reliance to these two factors. (J.A. 339)

<sup>47</sup>The trial court in *Enmund* found four statutory aggravating circumstances, one of which was that the murders were committed for pecuniary gain. As this Court noted, the Florida Supreme Court held that this finding was erroneous because "the findings that the murders were committed in the course of a robbery and that they were committed for pecuniary gain referred to the same aspects of petitioner's crime and must be treated as only one aggravating circumstance." *Enmund v. Florida*, 450 U.S. at 787.

<sup>48</sup>Indeed, it was this very devotion to family that resulted in petitioners' being on death row at all. Petitioners were tried together and convicted in Pinal



The Arizona Supreme Court's reliance on this vague, open-ended and omni-present "pecuniary" factor demonstrates the utter "standardless," "unchanneled," and "uncontrolled" discretion exercised by Arizona in determining who shall live and who shall die. Surely the presence of a pecuniary motive—even if it can be said to have existed here—does not "distinguish this case, in which the death penalty was imposed, from the many" other cases where the pecuniary motive was far greater but where the death penalty was not imposed.

The second factor affirmed by the Arizona Supreme Court was strikingly parallel to the one relied on by the Georgia Supreme Court and struck down by this Court in the *Godfrey* case itself. The Arizona statutory language is that the murders were committed "in an especially heinous, cruel or depraved manner." (Statutory Appendix at 4a) In the first place,

County for their part in the prison breakout. They were then charged with first degree murder, kidnapping, robbery and theft of a motor vehicle in Yuma County in connection with the death of the Lyons family. They subsequently entered into plea agreements with the prosecutor, whereby the State agreed not to seek the death penalty in return for their testimony at Randy Greenawalt's trial. Pursuant to the agreement, each petitioner had an interview with the prosecutor and a Detective Brawley (J.A. 9, J.A. 31), followed by an interview with the prosecutor and Randy Greenawalt's attorney (J.A. 48, J.A. 87). At the second interview, where Ricky was unaccompanied by counsel, Randy Greenawalt's attorney tried to question Ricky about events that occurred prior to the breakout. (J.A. 90) Ricky indicated that he was willing to discuss the prison escape and subsequent events, but did not want to discuss events preceding the breakout and the people involved in them. The prosecutor supported Ricky's desire not to discuss the pre-breakout events because "it's obvious that Ricky at this time doesn't have his lawyer" and told Greenawalt's attorney, "We can catch it before the trial down there if you think it's necessary." (J.A. 90) Greenawalt's attorney agreed to deal with the issue at a later date. *Id.* Ricky then continued with his statement.

Randy Greenawalt's trial began in February 1979. When the prosecutor tried to question Ricky Tison about the planning for the prison escape, he refused to testify. A recess was called, and the judge presiding at Greenawalt's trial, Judge Keddie, informed Ricky Tison that compliance with the plea agreement required him to testify about events preceding the prison breakout and the people involved in its planning. Ricky Tison then stated that he wished to withdraw from the plea agreement, and Raymond Tison stated that he wished to withdraw as well. (Transcript of February 7, 1979 at 2-20.) Later in 1979, petitioner's mother, Dorothy Tison, was charged with conspiracy to assist in the escape and several other counts related to the breakout. In 1981, she pleaded *nolo contendere* to one count of conspiring to assist in the escape and served nine months in prison. See, *infra*, n.3.

*Enmund* now precludes state courts from relying on the "manner" in which the killings were carried out by the *actual killers* in non-triggerman cases. What must be considered in a non-killer case are the individualized roles played by the non-killers. Thus, if it had turned out that unbeknownst to Enmund, his co-defendants suddenly decided to torture the "old people" they were robbing, that fact could not be used as a dispositive aggravating factor against Enmund. Only Enmund's own intent—"his culpability"<sup>49</sup>—can be considered, not that of his co-defendants who themselves selected the "manner" by which the killings would be carried out.

The logic of *Enmund* is especially applicable to the instant case. In concluding that the murders in this case were committed in an "especially heinous, cruel or depraved manner," the Arizona Supreme Court relied on the following:

The *senselessness* of the murders, given the inability of the victims to thwart the escape, especially in such an isolated area, and the fact that a young child, less than two years old, who posed no threat to the captors, was indiscriminately shot while in the arms of his mother, compels the conclusion that *the actual slayers possessed a shockingly evil state of mind*. Less violent alternatives which would have served their purposes in preventing their detection by authorities were obviously available. But they chose to slaughter an entire family and Theresa Tyson. The crimes were well within the plain meaning of the legislative language "especially heinous \* \* \* or depraved \* \* \*." (J.A. 337; emphasis added.)

The Arizona Court thus relied explicitly on the "shockingly evil state of mind" of the "*actual slayers*," rather than the surprised state of mind of the non-killer petitioners. Indeed, the very fact that the killings were "senseless" and "not essential" to serve the joint goals of all the participants serves to support the petitioners' uncontroverted statements that they were surprised by the sudden turn of events and were unable to do anything to stop the killings.

<sup>49</sup>*Enmund v. Florida*, 458 U.S. at 798 (emphasis in original).

Finally, even if the "manner" by which the actual slayers decided to kill their victims could be considered against the non-killer petitioners, there is no principled way of distinguishing these killings from the ones carried out personally by Godfrey. Both cases involved multiple shotgun killings. Here they were carried out simultaneously (though one victim, unbeknownst to the killers or the petitioners, survived for a time). In *Godfrey*, they were deliberately carried out *seriatem*, with the additional terror to the daughter and mother-in-law who saw their loved one murdered.

Most importantly, the combination of *Enmund* and *Godfrey* requires that this Court compare the consciousness and depravity of the non-killer petitioners here with that of the actual killer in *Godfrey* and in those many other cases where the death penalty has not been imposed. Any such comparison mandates the conclusion that there is no principled way to distinguish these non-killer petitioners who received the death penalty from the many killer and non-killer murder defendants (as well as manslaughter defendants whose actions posed a similar risk of death) who do not receive the death penalty. Indeed, if there is any principled distinction, it clearly cuts in favor of these petitioners who neither killed, planned to kill or specifically intended that anyone die. The imposition and affirmation of the death penalty on these petitioners requires the same conclusion reached in *Godfrey*: that the Arizona courts cannot be said to have applied a constitutional construction of the factors they relied on to affirm petitioners' death sentences, and that their death sentences must be reversed.<sup>50</sup>

<sup>50</sup>In the decisions below rendered in 1984, the Arizona Supreme Court did not rely on any additional aggravating factors. It simply concluded that the death penalty imposed on petitioners did not violate the *Enmund* requirement of intent. But in defining intent as broadly and vaguely as it did—to include "the situation in which the defendant intended, contemplated, or anticipated that lethal force would or might be used or that life would or might be taken"—the Arizona Supreme Court committed a violation of *Godfrey* (in addition to its violation of *Enmund*). The Arizona Supreme Court's new definition of "intent" is now so vague, open-ended and all-encompassing that there is no principled way to distinguish those defendants on death row who come within that definition from the vast number of defendants who also come within that definition but who were not sentenced to death. Indeed, the overwhelming majority of defendants who themselves

## CONCLUSION

In *Godfrey vs. Georgia*, this Court reversed a sentence of death on the ground that there was "no principled way to distinguish this case, in which the death penalty was imposed, from the many cases in which it was not." 446 U.S. at 433. Nor is there any principled or meaningful basis for distinguishing petitioners' cases, in which the death penalty was imposed, from the two cases *decided by the Court* which most directly govern the legal issues now before the Court. In both those cases, the death penalties were reversed. Petitioners respectfully submit that their own culpability—measured by their "consciousness," their actual participation, their youth, their relationship with their father and other relevant factors—was considerably less, and certainly no greater, than the culpability of *Enmund* or of *Godfrey*, or of most other defendants convicted of murder but not sentenced to death.

Indeed, a thorough search of the cases has produced no set of facts with as few and as weak aggravating factors personally attributable to the defendants and as many and as strong

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killed without specifically intending to in situations where they contemplated or anticipated that lethal force "might" be used or life "might" be taken are not even sentenced to lengthy prison terms. They are typically charged only with lesser crimes of the manslaughter, criminally negligent homicide, or reckless endangerment variety. See, *supra*, at 23, 23 n.26 and 24 n.27. Thus, the Arizona Supreme Court's newly contrived definition of "intent to kill" creates additional problems of standardlessness requiring reversal under *Godfrey*.

Arizona's attempt to expand—in accretion-like fashion—its definition of the "intent to kill" necessary to permit execution, thus violates both the substantive limitation imposed by *Enmund* and the *Godfrey* requirement of standards which distinguish in a "principled way" between the few who are sentenced to die and the many who are not. Under the expanded Arizona definition of intent to kill, the already large disparity between the vast number of defendants who could be sentenced to death and the minuscule number who actually would be sentenced to death would increase dramatically. This would exacerbate the problems addressed by this Court in *Furman* and its progeny: the need for a principled and meaningful "basis for distinguishing the few cases in which [the death penalty] is imposed from the many in which it is not." Therefore, given the petitioners' comparatively low level of personal culpability for the actual killings, to place them within the class of death-eligible persons would inaugurate the very difficulties of "arbitrary" and "freakish" application of the death penalty that this Court has struggled to eliminate since 1972.



mitigating considerations as this one, in which a penalty of death has ever been upheld.<sup>51</sup> The mitigating factors in this case include the following:

1. The petitioners were teenagers at the time of the crimes with no prior felony records;
2. The crimes were not committed for pecuniary gain, but were rather a misguided effort—stimulated by their father, mother and other relatives—to unite a family;
3. “[T]here was a family obsession, the boys were ‘trained’ to think of their father as an innocent person being victimized. . .”;
4. The petitioners agreed to participate in the escape only after reaching “an agreement with [their] dad that nobody would get hurt because we wanted no one hurt”;
5. No shots were fired and no one was hurt during the phase of the crime (the initial escape from prison) over which they maintained control;
6. Petitioners’ purpose in waving down the car and “kidnapping” its occupants was solely to “take the vehicle” without hurting anyone;
7. Petitioners were affirmatively led to believe, by the words and actions of their father, that the occupants would be left alive with a jug of water and a deliberately disabled car;
8. Petitioners’ father, Gary Tison, “exerted a strong, consistent, destructive but subtle pressure upon these youngsters” and “these young men got committed to an act which was essentially ‘over their heads’”;
9. The killing of the occupants was “not essential to the defendants’ ‘continuing evasion of arrest,’” and was thus unpredictable precisely because of its senselessness;
10. The killings took the petitioners “by surprise as much as it took the family by surprise. . .”;

<sup>51</sup>The only mitigating factors relied on by the sentencing court were youth, absence of felony record and felony murder instructions. (J.A. 285)

11. Petitioners could not do anything to stop the killings once their father and Greenawalt suddenly started shooting; “it was too late”;

12. Petitioners were convicted of murder on the basis of two legal constructs being superimposed on each other: The killings were attributed to them by means of accessorial liability; and the *mens rea* was attributed to them by means of the felony murder rule;

13. Petitioners have already suffered the death of their older brother who was killed in the course of the capture, and their father, who was found dead two weeks later;

14. Petitioners cooperated in the investigation and the search for the body of the missing victim, expressed remorse and regret over the killings, and agreed to testify against Greenawalt;

15. The plea bargain, which would have saved their lives, was broken only because they refused to provide information about their mother’s role in the escape plan (their mother eventually pleaded *nolo contendere* to conspiring to assist an escape and served nine months in prison);

16. This is a once-in-a-lifetime crime, motivated by a non-recurring situation, and the psychologist appointed by the court to evaluate petitioners for sentencing concluded that “these youngsters have a capacity for rehabilitation” and recommended a “structured and controlled setting”;

17. The presentence reports, written by the Chief Probation Officer, declined to recommend the death sentence;

18. If petitioners’ death sentences are reversed, they will still remain under a prison sentence of over 30 years;

19. The Arizona Supreme Court affirmed the death penalty in a split 3-2 decision, after acknowledging that petitioners did not kill, plan to kill, or specifically intend that the victims die.

Accordingly, for all these reasons, petitioners respectfully urge the Court to follow the clear precedents of *Enmund* and *Godfrey*, and order the reversal of the lower court's judgment upholding petitioners' death sentences.

Respectfully submitted

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## **STATUTORY APPENDIX**

**STATUTORY APPENDIX**

1. Ariz. Code of 1939, 43-116, in part, Ariz. Rev. Stat. Ann. § 13-139 (1956) (Repealed 1978).

All persons concerned in the commission of a crime whether it is a felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission, and all persons counseling, advising or encouraging children under the age of fourteen years, lunatics or idiots, to commit a crime, or who, by fraud, contrivance or force, occasion the drunkenness of another for the purpose of causing him to commit a crime, or who by threats, menaces, command or coercion, compel another to commit a crime, are principals in any crime so committed.

2. Laws of 1912, Ch. 35, § 25, Ariz. Rev. Stat. Ann. § 13-140 (1956) (Repealed 1978).

All persons concerned in the commission of a crime whether they directly commit the act constituting the offense, or aid and abet in its commission, though not present, shall be prosecuted, tried and punished as principals, and no other facts need be alleged in any indictment or information against such a person than are required in an indictment or information against a principal.

3. Ariz. Code of 1939, 43-2901, Ariz. Rev. Stat. Ann. § 13-451 (1956) (Repealed 1978)

A. Murder is the unlawful killing of a human being with malice aforethought.

B. Malice aforethought may be express or implied. It is express when there is manifested a deliberate intention unlawfully to take away the life of a fellow creature. It is implied when no considerable provocation appears or when the circumstances attending the killing show an abandoned and malignant heart.

4. Ariz. Code of 1939, 43-2902, Ariz. Rev. Stat. Ann. § 13-452 (Supp. 1957-1978) (Amended 1973) (Repealed 1978).

A murder which is perpetrated by means of poison or lying in wait, torture or by any other kind of wilful, delib-



erate or premeditated killing, or which is committed in avoiding or preventing lawful arrest or effecting an escape from legal custody, or in the perpetration of, or attempt to perpetrate arson, rape in the first degree, robbery, burglary, kidnapping, or mayhem, or sexual molestation of a child under the age of thirteen years, is murder of the first degree. All other kinds of murder are of the second degree. As amended Laws 1973, Ch. 138, § 1.

5. Ariz. Code of 1939, 43-2903, Ariz. Rev. Stat. Ann. § 13-453 (Supp. 1957-1978) (Amended 1973) (Repealed 1978).

A. A person guilty of murder in the first degree shall suffer death or imprisonment in the state prison for life, without possibility of parole until the completion of the service of twenty-five calendar years in the state prison, as determined by and in accordance with the procedures provided in § 13-454.

B. A person guilty of murder in the second degree shall be punished by imprisonment in the state prison for not less than ten years. As amended Laws 1973, Ch. 138, § 2.

6. Laws of 1973, Ch. 138, § 5, Ariz. Rev. Stat. Ann. § 13-454 (Supp. 1957-1978) (Repealed 1978).

A. When a defendant is found guilty of or pleads guilty to first degree murder, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the circumstances set forth in subsection E and F, for the purpose of determining the sentence to be imposed. The hearing shall be conducted before the court alone.

B. In the sentencing hearing, the court shall disclose to the defendant or his counsel all material contained in any presentence report, if one has been prepared, except such material as the court determines is required to be withheld from the defendant shall not be considered in determining the existence or nonexistence of the circumstances set forth in subsection E or F. Any information relevant to any of the mitigating circumstances set forth in subsection F may be presented by either the prosecution or the defendant, regardless of its admissibility under the

rules governing admission of evidence at criminal trials; but the admissibility of information relevant to any of the aggravating circumstances set forth in subsection E shall be governed by the rules governing the admission of evidence at criminal trials. Evidence admitted at the trial, relating to such aggravating or mitigating circumstances, shall be considered without reintroducing it at the sentencing proceeding. The prosecution and the defendant shall be permitted to rebut any information received at the hearing, and shall be given fair opportunity to present argument as to the adequacy of the information to establish the existence of any of the circumstances set forth in subsections E and F. The burden of establishing the existence of any of the circumstances set forth in subsection E is on the prosecution. The burden of establishing the existence of the circumstances set forth in subsection F is on the defendant.

C. The court shall return a special verdict setting forth its findings as to the existence or nonexistence of each of the circumstances set forth in subsection E and as to the existence or nonexistence of each of the circumstances in subsection F.

D. In determining whether to impose a sentence of death or life imprisonment without possibility of parole until the defendant has served twenty-five calendar years, the court shall take into account the aggravating and mitigating circumstances enumerated in subsections E and F and shall impose a sentence of death if the court finds one or more of the aggravating circumstances enumerated in subsection E and that there are no mitigating circumstances sufficiently substantial to call for leniency.

E. Aggravating circumstances to be considered shall be the following:

1. The defendant has been convicted of another offense in the United States for which under Arizona law a sentence of life imprisonment or death was imposable.

2. The defendant was previously convicted of a felony in the United States involving the use or threat of violence on another person.

3. In the commission of the offense the defendant knowingly created a grave risk of death to another person or persons in addition to the victim of the offense.

4. The defendant procured the commission of the offense by payment, or promise of payment, of anything of pecuniary value.

5. The defendant committed the offense as consideration for the receipt, or in expectation of the receipt, of anything of pecuniary value.

6. The defendant committed the offense in an especially heinous, cruel, or depraved manner.

F. Mitigating circumstances shall be the following:

1. His capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution.

2. He was under unusual and substantial duress, although not such as to constitute a defense to prosecution.

3. He was a principal, under § 13-452, Arizona Revised Statutes, in the offense, which was committed by another, but his participation was relatively minor, although not so minor as to constitute a defense to prosecution.

4. He could not reasonably have foreseen that his conduct in the course of the commission of the offense for which he was convicted would cause, or would create a grave risk of causing, death to another person. Added Laws 1973, Ch. 138, § 5.

NOTE: The preceding statutes were those in effect at the time of the crime for which petitioners stand convicted. They were then repealed and replaced when Arizona revised its criminal code, effective October 1, 1978.



# **RESPONDENT'S BRIEF**

Supreme Court, U.S.

FILED

MAY 30 1985

JOSEPH F. SPANIEL, JR.  
CLERK

No. 84-6075

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**In the Supreme Court of the United States**

OCTOBER TERM, 1985

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**RICKY WAYNE TISON and RAYMOND CURTIS TISON,**  
*Petitioners,*

v.

**STATE OF ARIZONA,**  
*Respondent.*

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On Writ Of Certiorari To The Supreme Court of Arizona

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**RESPONDENT'S BRIEF ON THE MERITS**

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**QUESTION PRESENTED**

Do the Eighth and Fourteenth Amendments prohibit a death sentence for one who plans a prison escape and then, while armed, participates in the escape, stops a car and robs and kidnaps the passengers, then herds them together and watches as his cohorts kill them?

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STATEMENT OF THE CASE

On the morning of July 30, 1978, Ricky, Raymond and Donald Tison drove to the Arizona State Prison and parked their Ford in the visitors' parking lot. They were there to see their father, Gary, who was serving a life sentence for killing a guard in an attempt to escape from the prison in 1967. (J.A. 243, 310.)

Raymond Tison left the car and entered the prison building. He went to the area set aside for visitors to meet with the prisoners, sat down and was soon joined by his father, Gary. The other two boys left the parking lot and then came back a half hour later and entered the prison. One of them was carrying guns concealed in an ice chest. In the control center the two met another prisoner named Randy Greenawalt who was also serving a life sentence for murder. They uncovered the guns, gave one to Greenawalt, and aimed them at the prison guards. (J.A. 96, 98.) In a short while they were joined by Gary and Raymond Tison, and the five then herded everyone, guards and a few visitors, into a storage room at gunpoint. With that, the five left the prison in the Ford and exchanged it for a Lincoln the boys had parked at a nearby hospital. (J.A. 10, 32, 33, 53, 93.)

The five, well-armed with guns and ammunition the boys had collected in preparation for the breakout, headed west in the Lincoln toward a town named Quartzsite. (J.A. 46, 49, 50, 52, 91, 116, 129.) They hid in an abandoned house in the desert for a few days and then continued on in the Lincoln. One of the tires went flat and then another, leaving them with no means of transportation. (J.A. 11, 13, 33, 35, 57-58, 99, 100.)

They decided they would have to "flag a car down and take it." One member of the gang would do the flagging because "one wouldn't look that bad" and the others would hide beside the road, two on each side. (J.A. 13, 14, 62, 64, 102, 103.) Raymond did the flagging. One car passed that did not stop, then a second car, a Mazda, passed, slowed down, made a U-turn and came back. The driver asked what the trouble was and as Raymond pointed to the Lincoln, the driver got out of the Mazda and the other members of the Tison gang, guns drawn, surrounded the newcomers, John and Donnelda Lyons, their baby son and their teenage niece, Theresa Tyson. (J.A. 14, 15, 36, 64, 65, 104.) John Lyons told the gang that he had a .45 caliber gun in his car and he asked that there be no "trouble." (J.A. 16, 66.) The gang removed the gun from the Mazda and then at gunpoint they ushered the Lyons family and Theresa

Tyson into the backseat of the Lincoln. With Raymond driving and Donald keeping watch on the Lyons from the front seat, they drove a short distance from the highway, followed by the Mazda with the other gang members. (J.A. 16, 17, 37, 66-67, 105.)

When the two cars stopped, the Lyons and Theresa Tyson were taken out of the Lincoln and made to stand in the light of the headlights. The two cars were placed trunk to trunk and the gang went through the Mazda "getting . . . what they had, if they had money or so forth." (J.A. 17, 18, 38, 68, 106.) They took some things from the Mazda, left others, and transferred everything from the Lincoln into the Mazda. (J.A. 24, 38, 44, 107, 131.) When that was done, Gary Tison told Raymond to drive the Lincoln further into the desert and to leave the motor running. Raymond did and Gary followed and fired a shotgun into the radiator "to make sure it wasn't going to run." (J.A. 19, 39, 61, 71, 108.) At the Mazda, the gang members were standing around the Lyons "like guard duty" waiting for Gary Tison to return. When he did they "escorted the Lyons family" and Theresa Tyson to the front of the disabled Lincoln where again they were forced to stand in the light of the headlights. As they were standing there, John Lyons pleaded, "more or less directed at everybody," "Jesus, don't kill me." Gary Tison said he was "thinking about it" and John Lyons continued, "Give us some water. That is all we ask for, just leave us out here, and you all go home." As Ricky would remember later, his father "was thinking about it real hard if I want to do this or not." (J.A. 20, 39, 73.) Gary told "nobody in particular," to go back to the Mazda and get some water and at that point Raymond Tison looked at his "dad and he was, you know, he was like in conflict with himself, you know. What it was, I think it was the baby being there and all this, and he wasn't sure about what to do." (J.A. 20-21, 39, 74, 108.)

Ricky Tison remembered that at that point he and Raymond stayed at the car while Donald went back to the Mazda. After escorting the Lyons family and Theresa into the Lincoln, Ricky and Raymond went to help Donald get the water. (J.A. 39, 40, 73, 108, 109.) They found the water jug and returned to the Lincoln where the three "went back to our, more or less, our ground where we were before, you know, watching." Gary and Randy Greenawalt went behind the Lincoln, talked, came back, raised up their shotguns and started firing. (J.A. 40-41.) When it was over Ricky and

Raymond went back to the Mazda, "threw the rest of the stuff" back in, and Ricky looked back at the Lincoln. Gary was "on the other side" and he was "firing into it." He fired "a couple more shots" and then everybody got into the Mazda and left. (J.A. 41-42, 78, 113-14.)

Later, Raymond Tison related that he thought he and his brothers were at the Mazda when the killings took place. He recalled that he "turned around and I could hear those shots and I could see flashes, you know. I could see silhouettes of the car and the people." He also remembered that "the shots went on longer than what they should have . . . I think they had reloaded once or twice . . . It just shouldn't have taken that much." (J.A. 21, 75, 77.)

John Lyon's body was found a few feet from the car. The body of Donnela was found in the backseat, her baby's body between her legs, and the body of Theresa Tyson was found some distance away in the desert. Eighteen spent shotgun shells were found beside the Lincoln.

A few days later, the gang, now riding in a van, ran into two roadblocks in Pinal County near Florence, Arizona, and were captured after exchanging gunfire with the police and crashing the van. Donald, the driver, was killed by a gunshot wound in the head. Raymond Tison, Ricky Tison and Randy Greenawalt were captured a short distance away from the crash and Gary Tison escaped. His body was found in the desert a few days later. He died of exposure. (J.A. 28-29, 291.)

Raymond and Ricky Tison and Randy Greenawalt were first tried in Pinal County for the crimes occurring during the prison breakout and the capture at the roadblock. All three were convicted of 17 counts of assault with a deadly weapon, possession of a stolen motor vehicle, unlawful flight from a pursuing law enforcement vehicle and aiding and abetting an escape.<sup>1</sup> Later, three trials were held in Yuma County for the murders of the Lyons family and Theresa Tyson. Randy Greenawalt was tried first. He was convicted of four counts of murder, armed robbery, kidnapping and theft of a

<sup>1</sup> *State v. Greenawalt*, 128 Ariz. 388, 626 P.2d 118 (1981), cert. denied, sub nom. *Tison v. Arizona*, 454 U.S. 848 (1981).



motor vehicle.<sup>2</sup> A separate trial was held for Ricky Tison on the same charges and then a third trial was held for Raymond. Like Greenawalt, each Tison was convicted of four counts of murder, armed robbery, kidnapping and theft of a motor vehicle. At each Tison's trial, the jury was instructed in regard to the murder charges that guilt could be found upon two theories: that the four victims were killed by acts of conspirators during a conspiracy, which bound all conspirators, and that the murders were committed during the commission of felonies perpetrated by the Tisons, avoiding a lawful arrest, escape, robbery, and kidnapping. (J.A. 179, 181, 218-20.) The jury was not instructed that they could find the Tisons guilty on a theory of premeditated murder.

After the convictions Raymond told a probation officer who was preparing a presentence report "if they became involved with legal authorities or were near capture that a shooting incident would occur. He stated that in terms of innocent civilians being injured that it was most unfortunate but that his father was in charge." (J.A. 305.) When asked if after the escape there had been mention of killing, he said, "Yea, there was always the possibility, like we knew in dad's 1967 escape, he killed that guard." (J.A. 243.)

After a statutory sentencing hearing,<sup>3</sup> the trial court, who is the sentencer in Arizona, considered the evidence admitted at the trial and at the sentencing hearing and found that three statutory aggravating circumstances had been proved beyond a reasonable doubt: (1) that in committing the murders, the Tisons had created a grave risk of death to people other than the victims, (2) that the Tisons had committed the offense in expectation of the receipt of some-

<sup>2</sup> These convictions were affirmed by the Arizona Supreme Court, 128 Ariz. 150, 624 P.2d 838 (1981), *cert. denied*, 454 U.S. 822 (1981). On March 20, 1986, the Ninth Circuit Court of Appeals reversed a district court denial of Greenawalt's petition for writ of habeas corpus and remanded on the basis of *Edwards v. Arizona*, 451 U.S. 477 (1981). *Greenawalt v. Ricketts*, 784 F.2d 1453, 1457 (9th Cir. 1986).

<sup>3</sup> A joint sentencing hearing was held: one hearing for both Tisons and all crimes.

thing of pecuniary value, the automobile and other property of the Lyons, and (3) that the murders were especially heinous, cruel and depraved. In regard to mitigation, the trial court noted that he considered all information relevant to any mitigation contained in the presentence report, the sentencing hearing, the trial, and in the detailed transcribed statements of both Tisons after their capture. (Raymond — J.A. 9-30, 48-86; Ricky — J.A. 31-47, 87-122.) The trial court found that none of the statutory mitigating circumstances were present: neither Tison's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the law was impaired, neither Tison was under unusual or substantial duress, each Tison "could reasonably have foreseen that his conduct in the course of the commission of the offenses for which he was convicted would cause or create a grave risk of causing death to another person," and "neither Tison's participation was relatively minor." In regard to the last point, the court noted that "although each of the defendants has stated the murders were actually committed by Gary Tison and Randy Greenawalt, the participation of each in the crimes giving rise to the application of the felony-murder rule in this case was very substantial. Even accepting as true their statements of who actually fired the fatal shots, it cannot be said that their participation was relatively minor." The court found that three non-statutory mitigating factors were present: their ages at the time of the murders (Ricky 20, Raymond 19), the lack of felony convictions before July 30, 1978, and the fact that each had "been convicted of four murders under the felony-murder instructions." (J.A. 283-85.)

Before the sentence was passed, Ricky Tison told the court "that it tears me up that that family was killed. It's something that I won't forget." Raymond Tison said that he wanted the court to know that "when we first came into this, we had an agreement with my dad that nobody would get hurt because we wanted no one hurt. And when this came about, we were not expecting it. And it took us by surprise as much as it took the family by surprise because we were not expecting this to happen. And I feel bad about it happening." (J.A. 286-87.)

The trial court "weighed the aggravating circumstances and the mitigating circumstances" and sentenced each Tison to death on

each of the four counts of murder and each to life terms for the two robbery counts, life terms for the three kidnapping counts, and 4 to 5 years for the theft of the Lyons' motor vehicle. The term of years and the life sentences were to begin on the day of sentencing.

On the direct appeal from these convictions, the Tisons argued that the aggravating circumstances had not been proved, that the participation of each of them in the murders was relatively minor, and that the death sentence was a disproportionate penalty for someone who took no part in the killing. (J.A. 305, 333-41.)

The Arizona Supreme Court held that the trial court should not have found as aggravation that in committing the murders the Tisons created a grave risk of death to persons other than the victims. Although the trial court's finding had "some support in the evidence," said the supreme court, "taking all the facts into consideration" the four victims were "ruthlessly and intentionally murdered" and the aggravating circumstance of creating a grave risk of death to others only applies where the other persons are not the intended victims. (J.A. 334.) The supreme court found that there was sufficient evidence, however, to prove the existence of the other two aggravating circumstances. The supreme court rejected the argument that the heinousness of the murder could not be attributed to the Tisons because they did not personally participate and were not present at the time of the killings. "We reject this notion," said the court in their opinion in the Ricky Tison case, "and construe the statute to mean that a defendant who is actually present at the homicide, having actually participated in all the events leading thereto, will not be heard to deny that he was not causally connected with the crime at the highest level and in the fullest sense." (J.A. 337-38.) The supreme court also noted that the trial court was mistaken in its belief that two other statutory aggravating circumstances were not present, prior felony convictions involving life sentences, and prior felony convictions involving violence. The convictions in Pinal County surrounding the breakout and the capture satisfied those two factors, said the court. The trial court's belief that because those charges could have been filed in the same indictment with the murder charges, and the fact that some of those crimes were committed after the murders made them non-separate offenses for aggravation purposes, was incorrect, said

the supreme court.

The supreme court also rejected the contention that the Tisons acted only under the "manipulative influence" of their father and that each had a non-violent character. "The evidence," said the court, "from beginning to end establishes the ruthless character of the participants in the offenses;" they "planned the escape for months" and "gathered together an arsenal of lethal weapons" that were used "against others" during the prison breakout and later to kill. As to the contention that the Tisons' participation in the killings was minor, the court quoted the trial judge's ruling and said, "Ricky and Raymond Tison associated themselves with others who were ready to and had in the past committed savage, homicidal acts. They were palpably indifferent to the consequences of their lawless conduct. They will not be relieved of the punishment the law exacts where the criminal association was formed, supported and carried out irrespective of the probable consequences that human life would be taken to ensure the success of the criminal enterprise," (J.A. 341.) "That they did not specifically intend that the Lyonses and Theresa Tyson die, that they did not plot in advance that these homicides would take place, or that they did not actually pull the triggers on the guns which inflicted the fatal wounds is of little significance." Their participation "was substantial." (J.A. 340-41.)

Two years later each of the Tisons filed a petition for post-conviction relief under Rule 32 of the Arizona Rules of Criminal Procedure. Among other things, each argued that the imposition of the death penalty was unconstitutional, under *Enmund v. Florida*, 458 U.S. 782 (1982). The petitions were denied by the trial court and the Tisons petitioned the Arizona Supreme Court for review. That court denied relief in October 1984. In its opinions, the court said that the case was significantly different than *Enmund* because Earl Enmund did not "actually participate in the events leading to the death . . . and was not present at the murder site." The Tisons, said the court, actively participated in the events leading up to the deaths, were present during the deaths and did nothing to interfere. Although the evidence did not show that the Tisons killed or attempted to kill, it did show that they intended to kill. That they both planned and prepared for the breakout, that they both held guns on prison guards and that they both knew that Gary Tison had killed a guard in a prior escape attempt led to the conclusion that



they could have anticipated the use of lethal force in the attempt to gain freedom. "The dictate of *Enmund* is satisfied," concluded the court. (J.A. 347.)

### SUMMARY OF ARGUMENT

This case is not like *Enmund*. Although the Tisons were convicted upon a theory of vicarious liability, their death sentences were imposed only after consideration of their personal participation in the murders and the acts that led to them and consideration of the culpability of each and the punishment that should attach to it. Unlike *Enmund*, the Tisons were active participants in the acts that led to the murders. They knew when they began their spree of crimes that guns might be used, they helped their cohorts prepare for the murders, they knew what was about to take place, and then they stood by and watched the murders. From these facts one may reasonably conclude that the Tisons intended to kill and knew that lethal force would be used. Death penalties for them will deter others from similar conduct in the future and will serve as just desert for the Tisons.

The principles of *Godfrey v. Georgia* have not been violated. These cases are no more like *Godfrey* than they are like *Enmund*. The aggravating circumstances that were found, murder for pecuniary gain and an especially heinous, cruel and depraved murder, are, as interpreted by the Arizona Supreme Court, understandable and they serve to distinguish those cases in which the death penalty is imposed from those in which it is not. Pecuniary gain is not present in all or even most felony-murders and these murders, unlike those in *Godfrey*, were especially heinous, cruel and depraved because they involved pain and mental distress to the victims and depraved and shockingly evil states of mind in the perpetrators. Moreover, the result in *Godfrey*, a reversal of the death sentences for failing to prove the only applicable aggravating factor, does not obtain here because even if the heinousness factor has not been proved, there is another aggravating factor that has been proved.

### ARGUMENT

#### I. THIS CASE IS NOT LIKE *ENMUND*.

##### A. THE ARIZONA SENTENCING PROCEDURE CONSIDERED THE PERSONAL INVOLVEMENT OF EACH OF THE TISONS.

The guilt of the Tisons was based upon something other than a determination that each deliberately killed. Each jury was instructed upon two theories of culpability: (1) a conspiracy during which each of the conspirators is liable for the acts of other conspirators, and (2) murder-felony with which a participant in the felony is liable for a killing by a co-participant. The prosecutor argued to each jury that if they believed the Tisons aided others in the escape, the flight to avoid arrest or the robbing and kidnapping of the Lyons family and Theresa Tyson and if, during those felonies, the killings occurred, then the Tisons were as guilty of the murders that resulted as the ones who did the actual killing. The verdicts were general; they did not specify the theory upon which the jury held the Tisons accountable.

Up to this point in the death sentencing process, Arizona does not require any other finding by the jury or a judge about a defendant's individual involvement in a murder. A guilty verdict simply makes the defendant eligible to receive the death penalty. Only after the verdict, with the finding and weighing of aggravation and mitigation, does the Arizona system fully focus upon the defendant's individual involvement and the consequences that attach to it. In this case that focusing began with a memorandum by the attorney for each of the Tisons attacking the existence of aggravating factors and setting forth those factors each believed mitigated against a sentence of death. The main argument in mitigation advanced by each attorney was the minor role each Tison played in the murders themselves. Neither attorney argued that his client did not participate in the prison escape or in the robberies and the kidnappings that followed. They stressed the undisputed fact that neither Tison pulled the triggers on the shotguns that did the killings. From that fact they argued that the participation of each was minor compared to the ones who did pull the triggers and because of that minor involvement, a sentence of death would be disproportionate. At the

joint sentencing hearing the defense presented witnesses who testified that before the prison breakout the Tisons had not been in trouble, that they were liked and that they were influenced by their father.

The trial court, the sentencer in Arizona's death penalty scheme, disagreed with the conclusions argued by the defense. He found that the participation of the Tisons in the criminal enterprise was substantial and there was no reason to treat them any differently from the others. The fact that each of them told the judge that he did not know the killings were going to occur and that he was sorry they had occurred made no difference; the judge could find no mitigation substantial enough to convince him that death sentences should not be imposed.

In the direct appeals the Tisons urged the Arizona Supreme Court to review the record and to come to their own conclusion that the participation of each was so minor that death was a disproportionate punishment. The court did review the record but it came to the same conclusion the trial judge did, that the participation of each Tison was substantial. Although that finding by the Arizona Supreme Court would normally be the final word of the state courts on the participation of a defendant, it was not for the Tisons. Two years later each Tison filed a petition for post-conviction relief raising the proportionality question again but this time urging that new authority from this Court, *Enmund v. Florida*, required that the death penalty be set aside. The trial court denied the petitions without a hearing, obviously feeling that *Enmund* did not require a different result. The Arizona Supreme Court felt the same way. That court once again reviewed the record and concluded that the participation of each Tison was so substantial that he would not be heard to say that he had no intent to kill.

In view of these things, it cannot reasonably be claimed that Arizona has not focused its attention upon the Tisons' individual involvement and their personal responsibility. If this were a habeas corpus action, the state court findings would be entitled to a presumption of correctness and the Tisons would have a heavy burden to show that the presumption should not be upheld. Even though this is not a habeas corpus action, the findings of the Arizona courts are entitled to great respect. See *Whitus v. Georgia*, 385 U.S. 545 (1967).

## B. THE PARTICIPATION OF THE TISONS IN THE MURDERS WAS SUBSTANTIAL.

Earl Enmund was given a death sentence for driving two armed robbers to within 200 yards of the scene of a robbery and then waiting in the car to help them escape. No regard was paid to whether Enmund intended that killings would take place or to whether he anticipated that lethal force would be used. There was even an implicit finding by the Florida Supreme Court that the murders during the robbery were spontaneous, precipitated by unanticipated armed resistance of the victims. See the companion case to *Enmund*, *Armstrong v. State*, 399 So.2d 953, 963 (Fla. 1981), cert. denied, 464 U.S. 865 (1983). There were no findings by the Florida Supreme Court that *Enmund* knew a murder would occur, that he supplied the guns that were used or that he knew of any plans by his cohorts to murder. When Enmund's case arrived in this Court, the only culpable act of Earl Enmund in the record was his driving the car. Enmund was not at the scene of the murder and he did nothing to assist the murderers. The Tisons, however, were at the scene and they did assist the murderers. They stripped the victims of their belongings, they helped keep the victims at bay while their father decided what to do with them, they herded the victims into position, then they stood by and watched as they were shot. Earl Enmund did nothing like that.

"It would be very different," this Court said in *Enmund*, "if the likelihood of the killing in the course of a robbery were so substantial that one should share the blame for the killing if he somehow participated in the felony." This appears to be a recognition that in some cases the death penalty is proper for one who aids in a robbery but does not kill. If there are such cases, this is one of them. There was nothing more the Tisons could have done to aid the act of killing. After placing the victims in the Lincoln, there was nothing left to do but shoot. The Tisons are in the same position as one who holds the victim while an accomplice stabs or one who disables the victim so the killer may more easily kill. Neither of those actors is a direct participant in the killing but by all accounts and measures each is as culpable and as morally blameworthy as the killer. So are the Tisons.

The Tisons argue that the Arizona Supreme Court fashioned a new and flawed definition of intent when it said that an intent to kill



included anticipation that a life *might* be taken or that lethal force *might* be used.<sup>4</sup> The court did say that but nevertheless they measured the Tisons' culpability by traditional theories of intent. For generations people have been held accountable for the consequences of their voluntary acts. Society will not accept a disclaimer of liability by an actor who set the stage for a criminal act, who knew his cohorts were contemplating a criminal act and who did nothing when the criminal act took place. In many such situations it is presumed he intended those results; in other instances it is inferred. However it is stated, the result has been that in some situations the law and common sense find an intent, no matter what the actor says. The Tisons were every bit as culpable as their father and Randy Greenawalt. They helped select the killing ground, they prepared it, and then they escorted the victims into it. They knew their father was contemplating killing because he said he was and they could see that he was bothered, perhaps by the fact that the baby was there. They knew what he was about to do, they both stood by while he decided to do it and then they both watched as he did it. They intended the grisly results as much as Randy Greenawalt and Gary Tison did.

The inference the Arizona Supreme Court drew about intent is the same inference Justice White spoke of in *Lockett v. Ohio*, 438 U.S. 586 (1978). He said, referring to *Lockett and Bell v. Ohio*, 438 U.S. 637 (1978), "Of course, the facts of both of these cases might well permit the inference that the petitioners did in fact intend the deaths of the victims." 438 U.S. at 627. The actions of Bell and Lockett were much like the Tisons. Willie Bell and Hall, his accomplice, who was armed with a sawed-off shotgun, kidnapped a man, drove him to an isolated area and then Hall took the man into a forested area out of Bell's sight. Bell heard the man plead for his life, then he heard a gunshot. Hall came back to the car where Bell was, reloaded his gun, returned to the forested area, and Bell heard another shot. Sandra Lockett suggested to her friends that they rob

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<sup>4</sup> Interestingly enough, this Court in one sentence in *Enmund*, 458 U.S. at 788, also used "might" when referring to the lethal force to be used, "anticipated that lethal force would or might be used."

a store. Her brother suggested they rob a pawnshop. Since Lockett knew the owner she decided not to go in but she drove the robbers to the pawnshop and then waited outside. When they finished and had killed the owner, Lockett drove them away from the scene and hid the gun under the seat. If these facts would support an inference of an intent to kill by Lockett and Bell, the facts in this case do also.

Other courts faced with similar facts have reached similar conclusions. In Louisiana in 1982, Jimmy Wingo and a cohort, Glass, escaped from jail, burglarized a home and killed the owners. The case for Wingo's participation in the murders was entirely circumstantial: he escaped from jail, he needed money and clothes, he appeared at a relative's home shortly after the burglary with money and clothes similar to the ones taken in the burglary, he said he had "robbed" a house, and when he was arrested a fiber was found on his pants that matched the fiber of a blanket on the bed where the bodies of the victims were found. When arrested he had a pair of gloves that matched the print of a fabric left on a dresser in the victims' home, and he boasted to an officer that he always wore gloves when he committed a crime. There was no direct evidence as to who killed the victims or how Wingo participated in the killings. One state's witness testified that Wingo told her that Glass had gone into the house and that he had waited outside. Nevertheless, the jury concluded that Wingo had a specific intent to kill or inflict great bodily harm and the Louisiana Supreme Court approved, saying "it was certainly reasonable for the jury to conclude that defendant's role was that of an equal partner in all of the crimes committed by the two during this episode, including the murders." Wingo, said the court, "actively participated in the killing of the victims" and the court upheld the death sentence. *State v. Wingo*, 457 So.2d 1159 (La. 1984), cert. denied, 105 S.Ct. 2049 (1985). Early this year, the Fifth Circuit Court of Appeals, paying § 2254 deference<sup>5</sup> to the state court findings, concluded *Enmund* had been satisfied and refused to disturb the death sentence. *Wingo v. Blackburn*, 783 F.2d 1046 (5th Cir. 1986).

In *State v. White*, 470 So.2d 1377 (Fla. 1985), Beauford White and his two associates entered a house intending to rob someone.

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<sup>5</sup> 28 U.S.C. § 2254(d) (1982).

They ransacked the house and then discussed whether to kill the occupants. White argued against the killings but the killings occurred anyway and he had nothing to do with them. The Florida Supreme Court, holding that *Enmund* did not prohibit a death sentence, said as to White's role, "it can hardly be said that he did not realize that lethal force was going to be used in carrying out the robbery." 470 So.2d at 1380.

In *Allen v. State*, 253 Ga. 390, 321 S.E.2d 710 (1984), cert. denied, 105 S.Ct. 1774 (1985), Stanley Allen and Woodrow Davis decided to rob an old lady. They overpowered her and each had intercourse with her. Then Davis threw her on the floor and stomped on her, killing her. Although Allen had nothing to do with the act of killing, the court said that the death penalty was appropriate because Allen "was an active participant in the events that led to the victim's death." 321 S.E.2d at 715.

In *Selva v. State*, 680 S.W.2d 17 (Tex.Cr.App. 1984), Selva and an accomplice entered a store to rob it. One of the two shot and killed a teller and as they fled, Selva fired at two pursuers. The state was never able to determine which of the two robbers shot the teller but the Texas Court of Criminal Appeals said that made no difference. As to Selva, the evidence was sufficient "to show that his conduct was committed deliberately and with reasonable expectation that death would result" and a death sentence was appropriate. 680 S.W.2d at 22.

In *Ruffin v. State*, 420 So.2d 591 (Fla. 1982), Ruffin assisted in the kidnapping of the victim. Then he, along with his accomplice, raped the victim. Ruffin knew that his accomplice was going to kill the victim but he did nothing to stop it and, after the killing, he continued on with his accomplice in their joint venture. The Florida Supreme Court agreed with the trial court that these facts showed "joint participation in the premeditated murder" and upheld a death sentence. 420 So.2d at 594.

In *Hall v. State*, 420 So.2d 872 (Fla. 1982), Hall, the accomplice of Ruffin, provided the weapon that was used to kill.<sup>6</sup>

<sup>6</sup> Hall maintained that Ruffin killed the woman. *Hall v. State*, 403 So.2d 1321 (Fla. 1981). Ruffin maintained that Hall did the killing. *Ruffin v. State*, 397 So.2d 277 (Fla. 1981), cert. denied, 454 U.S. 882 (1981).

Hall was present at the killing and he aided and abetted in the acts that led up to the homicide and the underlying felony. The Florida Supreme Court affirmed a sentence of death, saying, "There is no doubt in the court's mind that Hall intended Mrs. Hurst's death." 420 So.2d at 874. The Eleventh Circuit refused to disturb Hall's death sentence when the question came before them on a writ of habeas corpus. They held that *Enmund* was satisfied by the facts that Hall was present when Hurst was murdered, that he aided in her abduction and that his gun was used to kill her. *Hall v. Wainwright*, 733 F.2d 766, 771 (11th Cir. 1984), cert. denied, 105 S.Ct. 2344 (1985).<sup>7</sup>

In *People v. Ruiz*, 94 Ill.2d 245, 447 N.E.2d 148 (1982), cert. denied, 462 U.S. 1112 (1983), Ruiz and his accomplices lured the victims into their car where Ruiz watched as his accomplices stabbed two of the victims to death. Ruiz then helped take the victims' belongings. The Illinois Supreme Court said that these facts supported "an inference that he possessed the intent to take the lives of the victims" and upheld the death sentence. 447 N.E.2d at 158.

In *Cave v. State*, 476 So.2d 180 (Fla. 1985), Cave wielded a gun during the robbery of a store, was present when the clerk was abducted, heard her plead for her life and was present when others stabbed and shot her. Under those circumstances, said the Florida Supreme Court, "it cannot be reasonably said that appellant did not contemplate the use of lethal force or participate in or facilitate the murder" and the court upheld a sentence of death for Cave. 476 So.2d at 187.

In *Clines v. State*, 280 Ark. 77, 656 S.W.2d 684 (1983), cert. denied, 465 U.S. 1051 (1984), the court said:

Although perhaps only two of the appellants were in the bedroom when Mr. Lehman was killed, it cannot be ignored that when a group of individuals agree to execute a criminal enterprise involving the forced, nighttime

<sup>7</sup> The case was reversed in part on other issues, 733 F.2d at 778.



entry of a private dwelling, known to be occupied, wearing masks and armed with pistols, intent on robbery, it follows that murder is a most probable consequence. We think that likelihood of a homicide under the circumstances is so substantial as to bring this case clearly within the quoted exception of the *Enmund* decision on those circumstances alone. Added to that is the evidence that murder was plainly contemplated by appellants (they discussed the necessity of murder if they met resistance). 280 Ark. at 84, 650 S.W.2d at 687.

In *People v. Davis*, 95 Ill.2d 1, 447 N.E.2d 353 (1983), *cert. denied*, 464 U.S. 1001 (1983), *Enmund* was distinguished and the death penalty was upheld even though Davis had nothing to do with the act of killing. The killing occurred during a burglary, and at the time Davis' accomplice killed the victim, Davis was carrying stolen property to his car. From these facts and the fact that in a similar robbery 2 weeks earlier, Davis murdered the homeowner, the Illinois Supreme Court said that "the conclusion is inescapable that defendant must have anticipated the killing of the victim in the instant case." 95 Ill.2d at 52, 447 N.E.2d at 378.

And finally, in *Ross v. Kemp*, 756 F.2d 1483 (11th Cir. 1985), although there was evidence that Willie Ross shot and killed the officer, the circuit court said that even if that evidence was discounted, a death sentence for Ross was proper. Ross and three accomplices, masked and armed, entered a home looking for money. Then Ross and Turner kept the occupants hostage while two other accomplices left to look for more money. An officer entered the home and was shot. The state showed by statements Ross made later and ballistics tests on the guns he was carrying that he was probably the one who shot the officer. A death sentence was proper, said the circuit court, because Ross was "actively engaged in furthering the course of events that led directly to Meredith's murder, whether or not he actually pulled the trigger." The court said that "it would be incredible to believe that appellant did not contemplate that lethal force would be used either by himself or his accomplice." 756 F.2d at 1489.<sup>8</sup>

<sup>8</sup> The case was remanded to the district court on a point relating to jury composition. 756 F.2d at 1484.

The facts in all of these cases are appallingly similar. They show an intent to kill, an anticipation that someone would be killed or a realization that lethal force was going to be used. The Tisons knew all of these things.

Even if the definition of intent used by the Arizona Supreme Court and the conclusions that flowed from it were flawed, the Tisons fare no better because the facts show that each anticipated all during their joint venture that lethal force would be employed. In their planning for the prison breakout and the expected escape, the Tisons gathered a number of guns, sawed the barrels off the shotguns and also gathered ammunition for the guns. As soon as they got inside the prison, they armed their father, a man they knew had killed a prison guard in a prior escape attempt and they also armed a cohort of their father, Randy Greenawalt.<sup>9</sup> Although the guns were not fired until the murders, their apparent lethal force was used to subdue prison guards and visitors and then to subdue the Lyons family and Theresa Tyson. Raymond acknowledged after their capture that they would have used the guns if they had to. They had them, Raymond said, "In case something happened." (J.A. 242.) The Tisons also knew when they started out that there was a possibility of killing. "Yea, there was always the possibility, like we knew in dad's 1967 escape, he killed that guard. We knew he was in there on a murder charge. There was a possibility we didn't want to believe it." (J.A. 243, 249.) Then at the scene of the murders when they heard their father say that he was thinking of killing the Lyons family and Theresa Tyson, when they could see that he was struggling to make a decision and finally when they saw him and Greenawalt position themselves beside the Lincoln, they knew, they must have known, that lethal force was about to be used.

The Tisons also argue that the Arizona Supreme Court upheld their death sentences on direct review even though they found that the Tisons did not specifically intend that the victims die, did not plot the killings in advance, and did not pull the triggers. That

<sup>9</sup> Randy Greenawalt was also in prison on a murder conviction. He had murdered twice before. See *State v. Greenawalt*, 128 Ariz. 150, 624 P.2d 828 (1981), *cert. denied*, 454 U.S. 822 (1981).

holding, they argue, was "precisely the conclusion that this Court reversed in *Enmund*." (Petitioners' Brief, at 28.) But the rationale for the decision does not run counter to *Enmund*. When the supreme court used those words it was summarizing the arguments the Tisons had made. Then the court said that the fact that the Tisons did not do those things was of "little significance" in view of the roles they took in the events that led immediately to the murders. "The deaths would not have occurred but for their assistance," said the court, "If a crime is caused to occur by an accessory but the accessory is not the actual perpetrator, this fact will not alone constitutionally prevent punishment of the accessory to the same extent as the perpetrator since both have caused the death to occur." (J.A. 340-41.) That is not the conclusion this Court reversed in *Enmund*.

### C. DEATH SENTENCES IN THESE CASES WILL SERVE THE SOCIAL PURPOSES OF DETERRENCE AND RETRIBUTION.

In *Enmund* this Court said that a death penalty serves two social purposes, retribution and deterrence of capital crimes by would-be offenders, and unless the penalty contributes measurably to one of these goals it is useless and unconstitutional. Neither of those goals was served by sentencing Earl *Enmund* to death because he didn't kill, he had no intention of killing, he didn't know others were going to kill and he had nothing to do with the killings. With that lack of intent and lack of participation it can hardly be assumed, said the Court, that the possibility of a death sentence would have entered *Enmund*'s mind when he decided to rob. But that possibility did enter the Tisons' minds for after putting together an arsenal for the escape and arming their father, a convicted murderer, they asked him to promise that no one would be hurt. (J.A. 242.) The fact that the risk did not deter the Tisons from going ahead does not prove that such a risk will not deter others in the future.

Consider the effect something less than death sentences for the Tisons will have on people in the future who are planning similar activities. The risk they face will be far less. They will rob and kidnap to further their ends and run no risk of the ultimate penalty

as long as they do not perform the act of killing. That would not be just.

Retribution, said this Court, depended upon *Enmund*'s culpability, his "intentions, expectations and action." 458 U.S. at 800. These are the same things that guided the Court's decision on deterrence and for Earl *Enmund* the death penalty was not a just desert. It is for the Tisons, however, because they were participants, their participation was substantial, and their actions were as culpable as those of Randy Greenawalt and Gary Tison. Anything less than death for them would not be a just desert.

### II. GODFREY V. GEORGIA HAS NOT BEEN VIOLATED.

The Tisons maintain that in sentencing them to death the Arizona courts did not apply a constitutional construction to the two aggravating circumstances that were found and thus there is no principled way to distinguish their cases from other murder cases in which death penalties were not imposed. They argue that the aggravating circumstance of pecuniary gain<sup>10</sup> is present in virtually every felony-murder case and thus does not serve as a feature distinguishing one murder case from another.<sup>11</sup> But, as the opinions of the Arizona Supreme Court show, pecuniary gain is not part of virtually all felony-murders and the yardstick the court used in this case does provide a way of distinguishing one case from another. First, the motive to gain something of pecuniary value is only a small part of the Arizona murder-felony statute. One may be eligible for the death penalty by virtue of the murder-felony rule if the killing occurred during the following felonies: sexual assault,

<sup>10</sup> "The defendant committed the offense as consideration for receipt, or in expectation of the receipt, of anything of pecuniary value." Ariz.Rev.Stat. Ann. § 13-703 (F)(5).

<sup>11</sup> This point was not raised in state court on direct appeal or in the petition for post-conviction relief. The only thing argued about this aggravating factor was that it applied to hired killers, not to armed robbers like the Tisons.



sexual conduct, molesting of a child, abusing a child, kidnapping, burglary, arson, escape, certain drug offenses and robbery. Of these ten felonies, only one, robbery, invariably involves a motive to gain something of pecuniary value. Two others, kidnapping and burglary may involve pecuniary gain, and in the remaining six pecuniary gain has nothing to do with the crime. This aggravating factor then does serve as a measure to distinguish "the few cases in which [the penalty] is imposed from the many cases in which it is not." *Godfrey*, 446 U.S. at 427. And there is very little that is vague about this aggravating circumstance. One who murders to gain something of pecuniary value is eligible for the death penalty. It is not just the fact that something of pecuniary value was gained as a result of the murder. That will not do, the Arizona Supreme Court has said. There must be something more; the receipt of the thing of value must be a cause of the murder. Proving a robbery, for instance, does not automatically prove this aggravating factor. *State v. Carriger*, 143 Ariz. 142, 161, 692 P.2d 991, 1010 (1984), cert. denied, 105 S.Ct. 2347 (1984). And, on occasion, the supreme court has found that although something of value was gained by the defendants as a result of the murder, the facts did not show that the receipt was a cause of the murder and the supreme court has invalidated the sentencer's finding of pecuniary gain aggravation. *State v. James*, 141 Ariz. 141, 685 P.2d 1293 (1984), cert. denied, 105 S.Ct. 398, 415 (1984); *State v. Gillies*, 135 Ariz. 500, 662 P.2d 1007 (1983), cert. denied, 105 S.Ct. 1775 (1985); *State v. Madsen*, 125 Ariz. 346, 609 P.2d 1046 (1980), cert. denied, 449 U.S. 873 (1980).

The Tisons argue that this case is no different from *Godfrey* in regard to the second aggravating factor found by the Arizona Supreme Court, that the murders were committed in an "especially heinous, cruel or depraved manner." They note that the Georgia aggravating factor in *Godfrey* is "strikingly parallel" to Arizona's, and it is. They then go on to conclude two things: (1) that because the acts of killing were performed by others, *Edmund* precludes the state from relying upon this as an aggravating factor as to them, and (2) even if this factor can be considered against them, these killings were no different from *Godfrey*'s and the result must be the same, the death sentences must be reversed.

First, *Edmund* does not preclude the state from considering as

aggravation against the Tisons that the fact that the murders were especially heinous, cruel and depraved. *Edmund* does not attempt to tell states what it can and cannot define as aggravating and it does not attempt to tell states who and who may not be eligible for consideration of the death penalty. What it does is tell states that of those who qualify to be considered, none may be executed except those who killed, attempted to kill, intended to kill, or contemplated that lethal force would be used or life would be taken. If the manner in which the killing was carried out could be used as aggravation against only the killer, then an accomplice who is indisputably every bit as culpable, legally and morally, as the killer will be freed of the consequences of an aspect of the case that he helped to create. That would turn the notion of personal culpability on its head.

Second, this case is not the same as *Godfrey*. *Godfrey*'s death sentence was reversed because the only aggravating factor that supported it was invalidated. Once that factor was removed, there was nothing left. As this Court said in the beginning of its analysis, "the Georgia Supreme Court has affirmed a sentence of death based upon no more than a finding that the offense was 'outrageously or wantonly vile, horrible and inhuman.'" 446 U.S. at 428. In this case, "especially heinous, cruel and depraved" is not the only aggravating factor that supports the Tisons' death sentences. Both the trial court, the sentencer, and the Arizona Supreme Court found a second aggravating factor, that the murder was for pecuniary gain. The supreme court also held that there were two more factors the trial court should have found but did not:<sup>12</sup> prior felony convictions with life sentences, and prior felony convictions involving violence.<sup>13</sup> So, even if the heinousness factor is invalid,

<sup>12</sup> Under this Court's recent decision in *Poland v. Arizona*, No. 85-5023 (May 5, 1986), these two aggravating factors have not been lost to double jeopardy principles.

<sup>13</sup> "The defendant had been convicted of another offense in the United States for which under Arizona law a sentence of life imprisonment or death was imposable." Ariz.Rev.Stat. Ann. § 13-703 (F)(1).

"The defendant was previously convicted of a felony in the United States involving the use or threat of violence on another person." Ariz.Rev.Stat. Ann. § 13-703 (F)(2).

there is aggravation left to make the Tisons eligible for consideration for the death penalty and thus reversal would not be required. See *Zant v. Stephens*, 462 U.S. 362 (1982); *State v. Poland*, 144 Ariz. 388, 698 P.2d 183 (1985), affirmed by this Court May 5, 1986, No.85-5023; *State v. Bracy*, 145 Ariz. 520, 703 P.2d 464 (1985); *State v. Smith*, 146 Ariz. 491, 707 P.2d 209 (1985); *State v. James*, 141 Ariz. 141, 685 P.2d 1293 (1984), cert. denied, 105 S.Ct. 398, 415 (1984); *State v. McCall*, 139 Ariz. 147, 677 P.2d 920 (1983), cert. denied, 104 S.Ct. 2670 (1984).<sup>14</sup>

The heinousness factor does withstand *Godfrey* scrutiny. A large part of Georgia's problem in *Godfrey* was that by the concessions of the prosecutor in his argument to the jury, the wording of the jury's verdict, and the supreme court's cursory review of the aggravating factor, the statutory aggravating circumstance that the murder was "outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim" had been winnowed down to a murder "outrageously or wantonly vile, horrible or inhuman." Those are the words the jury used in its verdict. The state prosecutor conceded in his argument to the jury that the case did not involve torture or an aggravated battery, the trial court certified to the supreme court that there was no physical harm or torture and the supreme court affirmed with the simple statement that the evidence supported the jury's finding. The Georgia system was not working with all of its parts; it was trying to decide whether a perfectly constitutional aggravating factor was present but it was not using the tools necessary to produce a reliable decision. That is not the case with the Tisons. Like the Georgia Supreme Court had done, the Arizona Supreme

<sup>14</sup> But see *State v. Gillies*, 135 Ariz. 500, 662 P.2d 1007 (1983), cert. denied, 105 S.Ct. 1775 (1984), where the Arizona Supreme Court struck three of the four aggravating circumstances found by the trial court and, noting that the trial court had found mitigating circumstances but not sufficiently substantial to call for leniency, remanded to the trial court for a reweighing of aggravation and mitigation and a redetermination of penalty. Also see *Barclay v. Florida*, 463 U.S. 939 (1983).

Court crafted a workable definition of "especially heinous, cruel or depraved" from a number of different fact situations over the years and that definition was presented to the sentencer and discussed in memoranda by both the state and the defense. The judge had asked for a memorandum from each side on the question of heinousness because he was "concerned with what circumstances fall within heinous, cruel, and depraved manner." (Transcript of Aggravating Hearing and Sentencing, at 147.) The trial court set forth on the record the facts that proved the crimes were especially heinous (J.A. 282-83), the supreme court discussed the definition and the facts in prior cases in their opinions (J.A. 303-04, 334-38), and the supreme court conducted a proportionality review comparing this case with other cases with similar aggravating circumstances before the court affirmed the death sentences. (J.A. 350, 368.) Thus the Arizona courts used the definition of heinousness they had crafted and came up with a result that is in proportion to other cases and will serve as a signpost to distinguish future cases. In Arizona, cruelty involves "pain and the mental and physical distress visited upon the victims," and heinous and depraved "go to the mental state and attitude of the perpetrator reflected in his words and actions." *State v. Ceja*, 126 Ariz. 35, 39, 612 P.2d 491, 495 (1980). See *State v. Gretzler*, 135 Ariz. 42, 659 P.2d 1 (1983), cert. denied, 461 U.S. 971 (1983). As the court pointed out, cruelty was shown in this case by the physical pain suffered by Theresa Tyson as she crawled a good distance away from the car and bled to death, by the mental pain and anguish the victims suffered by being kidnapped at gunpoint, anticipating that they were about to be killed, and by seeing other family members murdered. The heinous and depraved state of the perpetrators was shown by the facts that a 2-year-old child was gunned down in the arms of his mother, the victims were helpless with no means of escape and there was no apparent reason for the killings and the 18 shotgun blasts other than a desire to kill. These things serve to define those cases that lie "at the core and not the periphery" of capital murder. *Harris v. State*, 237 Ga. 718, 733, 230 S.E.2d 1, 11 (1976), quoted in *Godfrey v. Georgia*, 446 U.S. at 430.



CONCLUSION

The Tisons planned the prison breakout, they gathered the guns and ammunition used in the breakout and escape, they helped stop the victims' car, they herded the victims at gunpoint into the Lincoln and then they watched as they were murdered. Their participation in the murders was substantial and deserves the death penalty. The judgements of the Arizona Supreme Court affirming the death sentences should be affirmed.

Respectfully submitted,  
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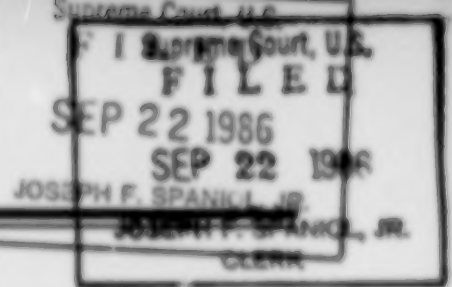
May 30, 1986

(9228D)

# **REPLY BRIEF**



(S)  
No. 84-6075



IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1986

RICKY WAYNE TISON and  
RAYMOND CURTIS TISON,

*Petitioners,*

v.

STATE OF ARIZONA,

*Respondent.*

On Writ Of Certiorari To The Supreme Court Of Arizona

**PETITIONERS' REPLY TO RESPONDENT'S  
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## INTRODUCTION

In *Cabana v. Bullock*, \_\_\_ U.S. \_\_\_, 106 S.Ct. 689 (1986), the Court reaffirmed its holding in *Enmund v. Florida*, 458 U.S. 782 (1982), that "a person who has not in fact killed, attempted to kill, or intended that a killing take place or that lethal force be used may not be sentenced to death." *Cabana v. Bullock*, *supra*, 106 S.Ct. at 697. The State of Arizona has admitted in this case that "at no time has [the Arizona Supreme C]ourt held that either petitioner actually killed any of the four victims or that either petitioner planned any of the killings. . . . The original conclusion that petitioners harbored no specific intent to kill remains unchanged." (State's Response to Joint Petition for Writs of Certiorari at 11).<sup>1</sup> Since the principles of *Enmund* and *Cabana* compel the reversal of petitioners' sentences of death, the State, in its Brief on the Merits has resorted to a selective treatment of some record facts and mischaracterization of certain cases in order to justify the execution of Ricky and Raymond Tison. Some of the more egregious mischaracterizations will be addressed below.

## ARGUMENT

### I. THE STATE HAS MISCHARACTERIZED KEY FACTS OF PETITIONERS' CASES.

The State noted the fact that on the night of the killings one of the victims, John Lyons, asked for water, and asserted that petitioners' father appeared to his sons to be

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<sup>1</sup> The Arizona Supreme Court said in response to petitioners' direct appeal, "That they did not specifically intend that the Lyonses and Theresa Tyson die, that they did not plot in advance that these homicides would take place, or that they did not actually pull the triggers on the guns which inflicted the fatal wounds is of little significance." J.A. 340-41.



"in conflict with himself. . . ." Respondent's Brief on the Merits ("State's Brief") at 2. However, the State fails to add that immediately thereafter Gary Tison sent petitioners to get water and that both petitioners understood that the water was intended for the Lyons family. J.A. at 40 ("Mr. Lyons, at the time just said 'Leave us some water.' Okay. My dad, that is the reason he sent back one of us to get water."); J.A. at 75 ("he told me and Ricky to go get some water, get a jug of water for these people.") Whether Gary Tison deliberately tricked his sons into thinking that the Lyons family would be left unharmed with water, or whether he later changed his mind about what he intended to do, there is no doubt upon the record that his sons believed the Lyons family would be left unharmed with the water, and that their belief was reasonable under the circumstances. See Brief for Petitioners at 5, nn.7-8. Furthermore, there is no evidence that any further actions either by petitioners' father or by Randy Greenawalt prior to the time Gary Tison and Greenawalt shot the victims either alerted or should have alerted petitioners to the fact that the killings were going to occur, nor is there evidence that petitioners were able to prevent them. *Id.*

Indeed, the facts that their father had been a model prisoner for eleven years, that his sons had been trained to believe that their father was an innocent victim, that no shot was fired during the prison escape, and that Gary Tison had promised his sons that no one would be hurt (see Brief for Petitioners at 3) provided additional bases for petitioners' belief that the Lyons family would not be harmed. The State's assertion that petitioners "knew" in advance that the killings would occur and nonetheless stood idly by is wholly without support in the record and

moreover flies in the face of strong inferences to the contrary which are grounded in the record.<sup>2</sup>

The State also has failed to summarize fairly all the material record references in a number of other instances. The State asserts that "Raymond acknowledged after their capture that they would have used the guns if they had to." State's Brief at 17. However, on the same page in the record referred to by the State, Raymond is quoted as saying, "I could not have cold bloodedly killed someone. . . . To kill all those people at the Prison would have been a senseless killing that is something I didn't want." J.A. 242; see Brief for Petitioners at 5 n.8.<sup>3</sup>

<sup>2</sup> The suddenness of the shootings, combined with the fact that the killers were strong men armed with shotguns, would have disabled virtually anyone from being able to prevent the killings under the circumstances. Petitioners, who were teenagers with no firearms experience, were even less likely to be in a position to do so since one of the killers was their father, who had promised them before the prison break that no one would be hurt, and had led them to believe that the family would be left unharmed. See Feldman, J., with whom Vice Chief Justice Gordon concurred, concurring in part and dissenting in part, in the opinion below, "There is neither a finding from the trial court nor evidence to establish that defendant was in a position to prevent the killing, if he had wanted to." J.A. 356, J.A. 374.

Additionally, it is not a capital crime to fail to prevent a murder. See American Law Institute Model Penal Code Art. 2, § 2.01(3):

(3) Liability for the commission of an offense may not be based on an omission unaccompanied by action unless:

(a) the omission is expressly made sufficient by the law defining the offense; or

(b) a duty to perform the omitted act is otherwise imposed by law.

<sup>3</sup> None of Raymond Tison's post-arrest statements can be used against Ricky Tison, and *vice-versa*, due to the individualized consideration required in capital cases. See *Enmund v. Florida*, *supra*, 458 U.S. at 798.

The State also refers several times to the fact that Gary Tison was in prison for the 1967 killing of a prison guard. Yet, the State fails to acknowledge that petitioners were eight and nine years old at that time and later grew to know a father who had a model prison record, who maintained a close relationship with his family, and who was portrayed to them by the rest of their family as a victim of society rather than as a unrepentant criminal. Brief for Petitioners at 3, 5 n.8.

Similarly, the State has mischaracterized the legal proceedings which have occurred. It asserts "it cannot reasonably be claimed that Arizona has not focused its attention upon the Tisons' individual involvement and their personal responsibility." State's Brief at 10. However, the State does not dispute the fact that petitioners were convicted of murder only under a combination of aiding and abetting, conspiracy, and felony murder statutes, and thus became eligible for the death penalty only because *both* the intent *and* the deeds of *others* were ascribed to them. See State's Brief at 9, Brief for Petitioners at 17-18. This is underscored by the fact that the aggravating circumstances that were applied to petitioners and relied on by the Arizona Supreme Court were precisely the same as those found by the trial judge when he sentenced to death one of the actual killers, Randy Greenawalt; indeed the sentencing judge used the same words in relation to the petitioners, who did not intend the deaths nor fire the shots, as he did in relation to Randy Greenawalt, who both intended and carried out the killings. Moreover, these aggravating factors all pertained to the circumstances of the killings themselves, which petitioners neither personally committed, attempted to commit, nor intended to have happen, rather than to petitioners' personal characteristics, intentions or acts. See Brief for Petitioners at 9 n.15.

The State also admits that it "made no difference" to the sentencing judge that each petitioner "told the judge that he did not know the killings were going to occur and that he was sorry they had occurred. . . ." See State's Brief at 10. It is clear that the State of Arizona has in fact studiously avoided "focusing[ing] its attention" on the facts of petitioners' personal involvement and individual responsibility, for doing so would make it crystal clear that *Enmund* requires that petitioners' sentences of death be vacated.<sup>4</sup>

Finally, the State disputes petitioners' assertion that the Arizona Supreme Court's affirmance of petitioners' death penalty on direct appeal was directly contrary to this Court's holding in *Enmund*. State's Brief at 17-18. However, in its affirmance of petitioner Raymond Tison's conviction and sentence of death in 1981, prior to the ruling in *Enmund*, the Arizona Supreme Court stated:

We therefore find it unnecessary to reconsider the following issues which were discussed *and resolved* in *State v. Ricky Wayne Tison*, Cause 4612, *supra*: . . . (16) that the imposition of the sentence of death upon an individual convicted under a felony murder theory without evidence that he was the actual perpetrator of the homicide or intended that the victim should die is grossly disproportionate and violates

<sup>4</sup>The State cites *Whitus v. Georgia*, 385 U.S. 545 (1967), for the proposition that "Even though this is not a habeas corpus action the findings of the Arizona courts are entitled to great respect." State's Brief at 10. However, in that case, this Court stated "It is our province to 'analyze the facts in order that the appropriate enforcement of the federal right may be assured,' . . ." *Id.* at 559 (emphasis added) (citation omitted). In any event, the factual findings of the Arizona Courts—as distinguished from some of their conclusory legal characterizations—fully support petitioners' constitutional contentions.



the prohibition against cruel and unusual punishment contained in the Eighth Amendment to the United States Constitution.

J.A. 292-94 (emphasis added).

The Arizona Supreme Court unequivocally answered that question in the negative in petitioners' cases, whereas this Court reached precisely the opposite conclusion in *Enmund*.

## II. THE STATE HAS MISCHARACTERIZED THE CASES IT CLAIMS SUPPORT ITS POSITION.

The cases cited by the State do not support its contention that Ricky and Raymond Tison can constitutionally be executed under the authority of *Enmund*. The State asserted that *State v. Wingo*, 457 So.2d 1159 (La. 1984), *cert. denied*, 105 S.Ct. 2049, *reh. denied*, 105 S.Ct. 2691 (1985), contained "similar facts." State's Brief at 13. In fact, *Wingo* was found guilty of first degree murder following instructions to the jury "that a verdict of first degree murder required a finding that defendant had the specific intent to kill or inflict great bodily harm." *State v. Wingo*, *supra*, 457 So.2d at 1163. This instruction is in direct contrast to that given in the Tisons' cases, where petitioners were convicted under felony murder instructions and the State has acknowledged that the Arizona Supreme Court has concluded, twice, "that petitioners harbored no specific intent to kill. . . ." Response to Joint Petition for Writs of Certiorari at 11.<sup>5</sup> Furthermore, in

<sup>5</sup> Indeed, the Louisiana Supreme Court distinguished *Wingo* from *Enmund* on precisely the same basis:

In *Enmund*, the defendant was convicted under a first degree murder statute which included felony murders and did not require specific intent. . . .

In Louisiana, the state must prove specific intent to kill or inflict great bodily harm in order to obtain a conviction of first degree murder, before the jury can even consider the death sentence.

*State v. Wingo*, *supra*, 457 So. 2d at 1170-71 (footnote omitted).

*Wingo*, the Louisiana Supreme Court concluded that "a rational juror . . . could have concluded beyond a reasonable doubt that defendant actively participated in the killing of the victims," *id.* at 1165; *see Wingo v. Blackburn*, 783 F.2d 1046, 1049, *reh. denied*, 786 F.2d 654 (5th Cir. 1986), whereas all acknowledge in the Tisons' cases that the evidence is to precisely the opposite effect. *See* J.A. 191, 285, 340-41, and Response to Joint Petition for Writs of Certiorari at 11.

Similarly, in *Ross v. Kemp*, 756 F.2d 1483 (11th Cir. 1985), "the state's theory at trial was that appellant was the triggerman," and two witnesses testified that Ross admitted to shooting the victim. *Id.* at 1488-89. Indeed, even a judge who dissented from the majority opinion on the issue of who must make an *Enmund* determination stated, "there is only a whimsical doubt as to whether Ross was the actual killer." *Id.* at 1500 (Clark, J., concurring in part and dissenting in part). The evidence in *Allen v. State*, 253 Ga. 390, 321 S.E.2d 710, *cert. denied*, 105 S.Ct. 1774 (1984), also indicated that Allen personally committed the murder and thus presents completely different facts from those in the Tisons' cases. *See id.*, 321 S.E.2d at 714-16; *see also* State's Brief at 9 ("the undisputed fact that neither Tison pulled the triggers on the shotguns that did the killings").

In *Cave v. State*, 476 So.2d 180 (Fla. 1985), *cert. denied*, 106 S.Ct. 2907 (1986), although appellant apparently did not personally shoot the victim, the court found that appellant participated in the kidnapping of the store clerk/witness and her transportation to a rural area where she was executed in his presence. The court concluded that "[t]he evidence leaves no reasonable inference but that the victim was kidnapped from the store and transported some thirteen miles to a rural area in order to kill and thereby silence the sole witness to the robbery."

*Id.* at 188 (emphasis added). The record in *Cave* demonstrates that appellant knew of the purpose of the kidnapping, agreed to the plan to kill the witness, and participated in, and was present during, every phase of the kidnap/execution. In *Tison*, on the other hand, the Lyons' car was not stopped "in order to kill" its passengers, but rather to obtain transportation. The decision to kill was later made secretly and without warning to petitioners, by Gary Tison and Randy Greenwalt, after petitioners had been sent away to secure water in order to keep the Lyons and Theresa Tyson alive.

The State also has relied on cases where the instructions to the jury and state law would not have permitted the Tisons to be sentenced to death. In *Hall v. Wainwright*, 733 F.2d 766 (11th Cir. 1984), *cert. denied*, 105 S.Ct. 2344 (1985), the Court noted that "the trial court adequately instructed the jury that it had to find that Hall personally had the intent to kill." *Id.* at 772. In petitioners' cases, however, the jury was instructed, and the prosecution argued, that the Tisons could be found guilty of murder under a combination of aiding and abetting/conspiracy statutes and the felony murder statute. J.A. 133-34; 136-37; 145; 177-180; 185; 191; 216-220.

In *People v. Ruiz*, 94 Ill.2d 245, 447 N.E.2d 148 (1982), *cert. denied*, 462 U.S. 1112, *reh. denied*, 463 U.S. 1236 (1983), also relied upon by the State of Arizona, the Illinois Supreme Court noted that Illinois law did not permit the execution of a defendant convicted of felony murder unless he was the actual killer.

Since the only intent necessary to support a felony-murder conviction is that to commit the underlying felony, the legislature provided that the death penalty can only be imposed upon the one actually doing the killing, to avoid the possibility of a person being put to death without having possessed even the general intent for the crime of murder.

*Id.*, 447 N.E.2d at 154 (citations omitted). This is in strong contrast to the law in Arizona and to the facts of petitioners' cases, where the trial judge found "as a mitigating circumstance" that they had been convicted under felony murder instructions, yet nonetheless sentenced them to death. J.A. 285; *see* State's Brief at 9.<sup>6</sup>

<sup>6</sup> Additional cases cited by the State, while arguably relying on incorrect interpretations of this Court's decision in *Enmund* (*see, e.g., State v. White*, 470 So.2d 1377, 1381 (Fla. 1985) (McDonald, J., dissenting)), also present fact situations devoid of the many mitigating factors present in petitioners' cases. In *Selva v. State*, 680 S.W.2d 17 (Tex. Crim. App. 1984), appellant shot at and attempted to kill his pursuers while running from a jewelry store where robbery and murder had just taken place. In *Ruffin v. State*, 420 So.2d 591 (Fla. 1982), appellant fired a gun at a pursuer and admitted to the rape of the young victim, who was seven months pregnant, although he claimed that it was his partner in the crime who murdered the victim. *Id.* at 594. In *State v. White*, *supra*, and *Clines v. State*, 280 Ark. 77, 656 S.W.2d 684, 687 (1983), *cert. denied*, 456 U.S. 1051 (1984), there was evidence that appellants and their co-conspirators discussed the need for killing prior to the commission of the murders. In *People v. Davis*, 95 Ill.2d 1, 447 N.E.2d 353, *cert. denied*, 464 U.S. 1001 (1983), *reh. denied*, 465 U.S. 1014 (1984), appellant had two prior convictions for murder and one for attempted murder, and admitted to participating in two additional murders prior to the one he was being tried for, all three of which followed the same pattern wherein appellant looted an old person's house while his colleague murdered the owner.

None of these factors exists in Ricky Tison's and Raymond Tison's cases. Neither had a felony record prior to helping their father escape from prison; there is no evidence that during the entire sequence of events either petitioner ever fired a gun, much less personally injured anyone; their father had had a model prison record for eleven years and had promised them that no one would be hurt; and both were led by their father to believe that the Lyons family would be left alive with water. There are numerous additional mitigating circumstances in their cases, as set forth in Brief for Petitioners at 43-45, that weigh strongly against petitioners' execution.



Despite the State's obviously extensive search of the case law, it has not been able to find a single case approving execution that begins to present the unique and strong mitigating circumstances present in petitioners' cases.<sup>7</sup> As petitioners stressed in their opening brief, there is no case in recent American history where first offenders like the Tisons have faced execution on a set of facts "with as few and as weak aggravating factors personally attributable to the defendants and as many and as strong mitigating considerations. . . ." Brief for Petitioners at 43-44. If these death sentences are affirmed, it will extend the constitutionally permissible scope of the death penalty a quantum leap beyond where any other court has gone since *Enmund*.

### III. PETITIONERS' EXECUTION WILL NOT ADVANCE THE GOALS OF DETERRENCE AND RETRIBUTION.

The State of Arizona asserts that executing Ricky and Raymond Tison will serve the goal of deterrence. However, as the Court pointed out in *Enmund*,

it seems likely that "capital punishment can serve as a deterrent only when murder is the result of pre-

<sup>7</sup> In *State v. Richmond*, 114 Ariz. 186, 560 P.2d 41, (1976), cert. denied, 433 U.S. 915, reh. denied, 434 U.S. 976 (1977), the Arizona Supreme Court stated that in death penalty cases it will conduct a proportionality review to determine "whether the sentences of death are excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant." *Id.*, 560 P.2d at 51. However, petitioners' cases contain no such review, although they requested one. Compare *State v. Nash*, 143 Ariz. 392, 694 P.2d 222, 236-37, cert. denied, 105 S.Ct. 2689 (1985); *State v. Villafuerte*, 142 Ariz. 323, 690 P.2d 42, 51 (1984), cert. denied, 105 S.Ct. 1234 (1985); *State v. Richmond*, 136 Ariz. 312, 321, 666 P.2d 57, cert. denied, 464 U.S. 986 (1983).

meditation and deliberation," *Fisher v. United States*, 328 U.S. 463, 484 (1946) (Frankfurter, J., dissenting), for if a person does not intend that life be taken or contemplate that lethal force will be employed by others, the possibility that the death penalty will be imposed for vicarious felony murder will not "enter into the cold calculus that precedes the decision to act." *Gregg v. Georgia*, *supra*, at 186 (footnote omitted).

*Enmund v. Florida*, *supra*, 458 U.S. at 799.

Since the evidence is clear that petitioners did not commit the killings, did not premeditate or deliberate the killings, and were in fact affirmatively led to believe by their father that the family would be left unharmed, "the possibility that the death penalty will be imposed for vicarious felony murder" simply would neither have affected petitioners' actions here, nor affected those of others in comparable circumstances.

The State also contends that society's need for retribution justifies the execution of Ricky and Raymond Tison. However, as this Court emphasized in *Enmund*, justification for retribution

very much depends on the degree of [petitioner's] culpability—what [petitioner's] intentions, expectations, and actions were. American criminal law has long considered a defendant's intention—and therefore his moral guilt—to be critical to "the degree of [his] criminal culpability," *Mullaney v. Wilbur*, 421 U.S. 684, 698 (1975), and the Court has found criminal penalties to be unconstitutionally excessive in the absence of intentional wrongdoing.

*Id.* at 800.

See *Gregg v. Georgia*, 428 U.S. 157, 187, reh. denied, 429 U.S. 875 (1976) (plurality opinion) ("when a life has been taken *deliberately* by the offender, we cannot say that the

punishment is invariably disproportionate to the crime. It is an extreme sanction, suitable to the most extreme of crimes.”) (footnote omitted) (emphasis added). The Court in *Enmund* concluded that “[p]utting Enmund to death to avenge two killings that he did not commit and had no intention of committing or causing does not measurably contribute to the retributive end of ensuring that the criminal gets his just deserts.” *Enmund v. Florida*, *supra*, 458 U.S. at 801.

The Supreme Court of Arizona has acknowledged “[t]hat [petitioners] did not specifically intend that the Lyonses and Theresa Tyson die, that they did not plot in advance that these homicides would take place, or that they did not actually pull the triggers on the guns which inflicted the fatal wounds . . .” but remarkably found those facts “of little significance.” J.A. 340-41. Yet under *Enmund*, and long-standing principles of criminal jurisprudence, those facts are of critical significance, because they demonstrate that retributive justice would not be served by executing two young men who neither killed, attempted to kill, nor intended that death occur.

#### IV. PETITIONERS’ EXECUTION WOULD VIOLATE THE PRINCIPLES UNDERLYING *GODFREY v. GEORGIA*, 446 U.S. 420 (1980).

The State of Arizona advanced two flawed propositions in connection with its discussion of the principles of *Godfrey v. Georgia*, *supra*. (State’s Brief at 19-23.) First, it argued that since the murders of the Lyons family and Theresa Tyson were heinous and cruel, Ricky and Raymond Tison merited the death penalty.<sup>8</sup> But this

<sup>8</sup> As noted in Petitioners’ Opening Brief, the murders here—committed by Greenawalt and petitioners’ father—hardly seem distinguishable from those committed by Godfrey himself.

aggravating factor cannot constitutionally be applied to petitioners because they were neither the people who did the killing nor the people who selected the means used to kill the Lyons family. *Enmund* clearly requires that “[t]he focus must be on [the individual defendant’s] culpability, not on that of those who committed the robbery and shot the victims, for we insist on ‘individualized consideration as a constitutional requirement in imposing the death sentence’ . . .” *Enmund v. Florida*, *supra*, 458 U.S. at 798 (citation omitted). The Court went on to say that

Enmund did not kill or intend to kill and thus his culpability is plainly different from that of the robbers who killed; yet the State treated them alike and attributed to Enmund the culpability of those who killed the Kerseys. This was impermissible under the Eighth Amendment.

*Id.*

Using the heinousness of a crime committed by others to justify the execution of petitioners is just such an impermissible act, as petitioners have argued. Brief for Petitioners at 41.

Additionally, the State argues that because *Godfrey* only involved one “aggravating circumstance,” heinousness, and petitioners’ cases involve two, heinousness and receipt of pecuniary gain, somehow *Godfrey* is not applicable.<sup>9</sup> This argument misreads the import of *God-*

<sup>9</sup> The State notes that the Arizona Supreme Court observed, on direct appeal, that the trial court *could* have ruled that petitioners’ convictions in a different county for helping their father in the prison break constituted aggravating circumstances under Arizona’s death penalty statute, Laws of 1973, Ch. 138, § 5, Ariz. Rev. Stat. Ann. § 13-454 (Supp. 1957-1978) (Repealed 1978) (See Statutory Appendix to Brief for Petitioners at 2a-4a). State’s Brief at 21. Significantly, the Arizona Supreme Court then specifically eschewed any reliance upon those convictions in upholding petitioners’ sentences of death. J.A. 339.



*frey*. First, since petitioners were not the people who shot and killed the Lyons family and Theresa Tyson, the aggravating factors that the killings were performed to obtain pecuniary gain and were heinous should not be used to justify petitioners' execution under the individualized consideration mandated by *Lockett v. Ohio*, 438 U.S. 586, 605 (1978), and by *Enmund v. Florida*, *supra*, 458 U.S. at 798.

Additionally, *Godfrey* reaffirmed the principle that a capital sentencing scheme must provide a "meaningful basis for distinguishing the few cases in which [the penalty] is imposed from the many in which it is not." *Godfrey v. Georgia*, *supra*, 446 U.S. at 427 (quoting *Gregg v. Georgia*, *supra*, and *Furman v. Georgia*, 408 U.S. 238, *reh. denied*, 409 U.S. 902 (1972)). In view of all the circumstances of petitioners' cases, as set forth in the record and summarized in their Opening Brief, it is impossible to fairly conclude that they deserve death while others far more culpable are permitted to live. Compare, for example, *State v. McDaniel*, 136 Ariz. 188, 665 P.2d 70 (1983), where the Arizona Supreme Court stated that defendant "was a major participant in the robbery and beating of [the victim]. Together with Mark Rich, the defendant then bound the victim's hands and legs, forced him to drink alcohol, gagged and wrapped him in a blanket, and then locked him in the trunk of his car." *Id.*, 665 P.2d at 81. The defendant's accomplices drove the car with the victim in it to a parking lot, and defendant followed in his own car to pick up his friends. The car was abandoned in the August heat of Phoenix and the victim was found dead two days later. *Id.* at 74. Prior to the killing, defendant had stated that "he was going to have to kill [the victim]." *Id.* at 83.

The Arizona Supreme Court concluded that McDaniel "did in fact kill" and that under the circumstances

"McDaniel should have foreseen the victim's suffering." *Id.* at 82. Nonetheless, that Court concluded that "defendant's lack of intent to kill is a mitigating circumstance sufficiently substantial to call for leniency in this case," and vacated his death sentence. *Id.* at 83.

There is simply no principled way to conclude that petitioners are deserving of death because, as the Arizona Supreme Court claims, they "intended" to kill under that Court's accordion-like definition of "intent" (Brief for Petitioners at 13), while McDaniel lacked sufficient intent to kill to merit execution. Indeed, a comparison of petitioners' case with any murder case of which petitioners are aware demonstrates that not only are they no more personally culpable than the vast majority of defendants who are permitted to live, but they are much *less* culpable. The substantial number of mitigating factors in this truly unique case were set forth in Petitioners' Opening Brief at 43-45 and will not be repeated again. However, those mitigating factors compel the conclusion that under *Godfrey*, petitioners' sentences of death cannot stand.

The Arizona Supreme Court contends that petitioners can be executed because "intend to kill includes the situation in which the defendant intended, contemplated or anticipated that lethal force would or *might* be used or that life would or *might* be taken in accomplishing the underlying felony." J.A. 345 (emphasis added). However, the Arizona legislature has legislated that a person convicted of causing the death of another without premeditation, but while "*knowing* that his conduct *will* cause death or serious physical injury" *cannot* be executed, for he is only guilty of second degree murder. See A.R.S. §§ 13-1104, 13-710 (Statutory Appendix (emphasis added), attached, at 1a). To assert that someone who "anticipated" that death "*might*" result can be executed

when state law forbids the execution of one who *knows* that his conduct *will* cause death turns law, logic, and proportionality on its head. Cf. American Law Institute Model Penal Code and Commentaries § 210, p. 312 n.42 ("To say that the accomplice is liable if the offense committed is 'reasonably foreseeable' or the 'probable consequence' of another crime is to make him liable for negligence, even though more is required in order to convict the principal actor. This is both incongruous and unjust; if anything, the culpability level for the accomplice should be higher than that of the principal actor. . . .").

#### CONCLUSION

The holding in *Enmund*, as expressed in recent rulings of the Court, is clear—a state cannot execute one who has not been proven to have killed, to have attempted to kill, or to have intended to kill or to employ lethal force. *Cabana v. Bullock*, *supra*, 106 S.Ct. at 697; *see Skipper v. South Carolina*, \_\_\_ U.S. \_\_\_, 106 S.Ct. 1669 (1986) (Powell, J., with Burger, C. J., and Rehnquist, J., concurring in the judgment) where Justice Powell stated:

The sentencing jury in *Lockett* was barred from considering evidence of the defendant's youth, her "*lack of specific intent to cause death*," and "*her relatively minor part in the crime*." 438 U.S., at 597, 98 S.Ct., at 2961. Such evidence obviously bore strongly on the degree to which the defendant was morally responsible for her crime; indeed, we have since held that similar evidence *precludes* application of the death penalty for precisely this reason. *Enmund v. Florida*, 458 U.S. 782, 798-801 (1982).

*Skipper v. South Carolina*, *supra*, at 1675 (emphasis added in part).

Petitioners, as is demonstrated by every facet of the records in their cases, lacked the culpable intent to cause

death or lethal harm that is required to support their execution. *See* State's Response to Joint Petition for Writs of Certiorari at 11 ("[T]he original conclusion that petitioners harbored no specific intent to kill remains unchanged."). Furthermore, the many strong mitigating factors, and unusual circumstances, present in their cases militate strongly against the execution of these young men. The Arizona Supreme Court's 3-2 decision extending the permissible boundaries of the death penalty to include these defendants violates the Eighth Amendment to the United States Constitution. Petitioners therefore ask that the Court vacate their sentences of death.

Respectfully submitted,  
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**STATUTORY APPENDIX**

**STATUTORY APPENDIX**

1. Laws of 1984, Ch. 44, § 2, Ariz. Rev. Stat. Ann. § 13-710 (Supp. 1985)(Amended 1985).

Except as provided in § 13-604, subsection N [prison terms for recidivists] or § 13-604.01 [prison terms for those committing certain crimes against children], a person who stands convicted of second degree murder as defined by § 13-1104 shall be sentenced to a presumptive term of fifteen calendar years. The presumptive term imposed pursuant to this subsection may be mitigated or aggravated by up to five years pursuant to the terms of § 13-702, subsections D and E.

2. Laws of 1977, Ch. 142, § 60, Ariz. Rev. Stat. Ann. § 13-1104 (Supp. 1985)(Amended 1984, 1985).

A. A person commits second degree murder if, without premeditation:

1. Such person intentionally causes the death of another person; or
2. Knowing that his conduct will cause death or serious physical injury, such person causes the death of another person; or
3. Under circumstances manifesting extreme indifference to human life, such person recklessly engages in conduct which creates a grave risk of death and thereby causes the death of another person.

B. Second degree murder is a class I felony and is punishable as provided by § 13-604, subsection N, § 13-604.01 if the victim is under fifteen years of age or § 13-710.



# **SUPPLEMENTAL BRIEF**

MOTION FILED  
NOV 4 - 1986

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No. 84-6075

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1986

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RICKY WAYNE TISON AND RAYMOND CURTIS TISON,  
*Petitioners,*

v.

STATE OF ARIZONA,  
*Respondent.*

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On Writ Of Certiorari To The Supreme Court Of Arizona

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**MOTION OF PETITIONERS FOR LEAVE TO FILE A  
SUPPLEMENTAL BRIEF AFTER ARGUMENT**

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Pursuant to Sup. Ct. Rule 35.6, petitioners ask that they be permitted to file a Supplemental Brief in this case. As grounds for this Motion, petitioners state that during oral argument on November 3, 1986, the counsel for Arizona did not accurately set forth the content of certain statements by petitioner Ricky Tison. Counsel for petitioners disputed counsel for Arizona's assertions, and wishes now to point out in the long record in this case where Petitioner Ricky Tison's statements are located and what they contain.

Therefore, petitioners ask that they be permitted to file the attached Supplemental Brief.

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#### SUPPLEMENTAL BRIEF

During the oral argument in the above-entitled case, counsel for petitioners argued that Counsel for Arizona misstated the record in asserting that only Raymond Tison had said that his father had sent him away to get water for the victims, but that Ricky Tison had maintained that he had *not* gone back to get water. Counsel for petitioners categorically disputed that assertion and represented to the Court that in every one of *both* Ricky and Raymond's statements—from the moment of their arrest to their sentencing and incarceration—both had consistently maintained that they went back to the Mazda (which was 50-75 yards from the disabled Lincoln in which the victims had been left) to get water for the victims.

This Memorandum is intended to document that representation and to aid the Court by pointing to all the relevant record references. It is particularly important in light of Arizona's statement of oral argument that in this case, the actual presence of the defendants at the scene of the killing was an "essential" prerequisite for their eligibility to be executed.

As soon as Raymond and Ricky were arrested at the scene of the roadblock, they were questioned by Sergeant Ellis Salyer, who testified at Ricky's trial as follows:

Q. And did he tell you what happened next?

A. Gary and Randy went to the Lincoln, shot a few holes in it, then asked that the people from the Mazda be brought to the Lincoln, placed in the back seat of the Lincoln.

At this point Gary told the boys to go back to the Mazda and get the water jug. About the [464] time they get back to the Mazda they hear shotguns going off. Due to the darkness all they could see was the flashes from the shotguns.



(Joint Appendix at page 131.) Thus, Ricky's first—spontaneous, unrehearsed admission—was that his father Gary had sent the boys back to the Mazda and that the shooting began “about the time they get back to the Mazda.” Raymond has always maintained that his father sent him and his brothers (Ricky and Donny) back to the Mazda to get water for the victims and that the shootup began while they were still “down at the Mazda.” Joint Appendix at pages 21 and at pages 75-76.

It is true that at a later time, Ricky expressed some confusion about exactly where he was when the shooting took place. Joint Appendix at pages 41 and 111. But he never wavered from his statement that his father sent the boys for water after the victims had asked to be left alive with water. Joint Appendix at page 40. Indeed, he was very specific about the details, recalling that at first Donny (his older brother who was later killed at the roadblock) went for the water, but then

Donny was having problems finding the water jug because the back of the Mazda was pretty full with stuff, so that is when me and Ray went back and tried to help him get the water, because dad called back again, you know, a little higher tone this time wanting to know where the water was . . .

(Joint Appendix at page 40.) *See also* Joint Appendix page 109.

Thus, contrary to Arizona's assertion on oral argument that Ricky never said that he had gone back to the Mazda to get water for the family, the record is unambiguous and consistent that both Ricky and Raymond have always maintained that they went back to the Mazda to get water

after the victims pleaded to be left alive with water.<sup>1</sup> There is absolutely nothing in the record to the contrary.<sup>2</sup>

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<sup>1</sup> Arizona law requires that facts necessary to qualify a defendant for execution must be found “beyond a reasonable doubt.” *State v. Libberton*, 685 P.2d 1284, 1288 (1984); *State v. McDaniel*, 665 P.2d 70, 81 (1983).

<sup>2</sup> In response to Justice Powell's question regarding the statement contained in the first opinion of the Arizona Supreme Court at J.A. 346, counsel for petitioners responded that the full context of that statement would demonstrate that the defendants never intended to kill. The statement in context appears at J.A. 242.